December 23, 2005

To: Jonathan G. Katz, Secretary
The United States Securities and Exchange Commission

From: The Undersigned NYSE Investors

Re: NYSE Separated Option Trading Rights (SR-NYSE-2005-77)

Introduction

The filing of this comment is the consummation of a process by a group of investors whose only recourse this seems to be. It is a filing necessitated by the circumstances and the almost insurmountable (by us) resources of the filing's object, the New York Stock Exchange. It is a filing that complements a recent similar filing to the Attorney General of the State of New York, an authority that considering recent court action of its own, has shown it has the jurisdiction to investigate such matters.

The undersigned and others are individuals who have invested directly in the New York Stock Exchange through the purchase of Options Trading Rights. Although the actual number of those affected is relatively small (estimated between 25 and 50), it is important to know that the process of investing in the NYSE was open to virtually everyone.

New York Stock Exchange Membership Definitions

A) New York Stock Exchange (with OTR) is a full NYSE membership, allowing the holder to effect trades in NYSE traded equity, debt and option securities. It also allows the holder to participate in membership votes and is considered an owner of $1/1366^{th}$ of the exchange.
B) New York Stock Exchange (Ex/OTR), like the full NYSE membership except without the rights to effect trades in option securities.
C) Option Trading Rights (OTR) allows the holder to effect trades in option securities. The holder has no membership vote or ownership of the physical assets of the exchange.

Preliminary

The purpose of this report is to paint a general picture of the relationship between the New York Stock Exchange (NYSE) and both its option business participants and the option industry as a whole, past, present and future. It will reveal an active options exchange whose participants invested in it, enthusiastically. It will reveal an exchange

whose participants witnessed it "exit' the options business, skeptically. It will reveal an exchange, whose participants waited for its inevitable re-entry into the option business, patiently. It will reveal an exchange whose participants watched it re-enter the option business without them, incredulously. It will reveal an exchange that voluntarily became obligated on a permanent basis to those who invested in it in the past, via SEC approved changes to its own Constitution (supporting document #1); and an exchange that now seems to be making efforts to walk away from those obligations. It will reveal an exchange that is on the verge of a new and exciting future as multi-product, global exchange but is attempting to go forth into it at the expense of its investors of the past. It will reveal an exchange whose actions have now brought some of those investors to the court/regulatory system, albeit reluctantly, as an undesired and last resort.
In April, 2005, The NYSE announced that it was entering into a merger with ARCA/EX, an electronic exchange in stocks and options. President Thain told a membership meeting shortly thereafter, that NYSE Ex/OTR memberships would be made whole (they would not have to complete their seats with OTR's to participate in the pending deal) and that NYSE separated OTR owners would have to contact the exchange legal department. Posting of separated OTR markets, which the exchange had undertaken to do since September of 1983, ceased on April 25, 2005. A May,26, 2005 memo from President Thain to the membership stated that all trading rights would be extinguished; that full seats with and without OTR's would receive the same consideration; and that separated OTR owners would not be compensated for their rights to trade NYSE options despite their being an integral portion of full NYSE memberships; and having been expressly created to allow the holder to effect option trades under the auspices of the NYSE (supporting document #2), a business which the exchange was about to re-enter.

History

In September, 1983, the New York Stock Exchange (NYSE) entered the stock option business by opening the NYSE Options Trading Floor in part of the exchange complex at 30 Broad Street, New York, N.Y. It was the fifth United States options exchange to engage in listed options transactions. To staff its new exchange, the NYSE issued option trading rights (OTR's) to each of its 1366 equity seat holders. OTR's were paired with the equity seats so that the 1366 new OTR holders had the right to conduct an option business, lease out their OTR, sell their OTR, or do nothing. Most equity seat owners chose to do nothing, letting their OTR's lie dormant. The NYSE membership department was assigned the responsibility of posting bid/offer markets in OTR's, just as they were responsible for posting markets in full equity seats (what the NYSE defined as NYSE Equity Memberships with OTR's). The membership department was also now charged with the responsibility of posting markets in NYSE Equity Memberships Ex/OTR (equity seats with the OTR having been sold by the seat owner). Approximately 25 -50 OTR's are currently separated from full NYSE seats, purchased within an approximate range of $5,000 to $ $65,000. It should be noted that for all practical purposes OTR investors were subject to the same membership transfer fees, membership dues, regulatory filing requirements where applicable, and a variety of other exchange member rules and fees, as were regular members. As an aside, the NYSE was required to register with the SEC as an options exchange in order to effect options trades under its auspices.

Background

In 1996, the NYSE announced that it was going to "exit" the option business. Senior exchange officials explained that the prospect of "side by side" trading (stocks and their respective options trading next to each other), had been regulated out of legality, so that combined with a reported negative bottom line to operate the business, it was no longer necessary for the NYSE to conduct an options business as a defense.

Deliberations

Throughout the entire process of NYSE's management's deliberations on how to dispose of its option business, a process that seemed to take several months, floor broker-dealers were briefed on a regular basis. Many wanted the options business to be sold to the New York Cotton Exchange, a move that would have kept the surviving entity whole, permanent, with unlimited potential, and in New York City. Evidentially the NYCE was extremely interested in acquiring the NYSE options business too, as NYCE President, Joe O'Neil, met Chairman Grasso on at least one occasion. President O'Neil was so certain that his exchange would be the acquiring entity, in fact, that he told one NYSE floor participant to "trust him on this one". In approximately the fall, 1996, there was a meeting with Chairman Grasso, President Johnston and concerned floor brokers/dealers. The meeting was held in Mr. Grasso's office and lasted approximately an hour and fifteen minutes. The floor broker/dealers were there to urge the NYSE, if its decision to exit the NYSE was beyond recall, to dispose of the business in a way that would not hurt the participants or investors either financially or logistically. Of the matters that stood out at the meeting one was Chairman Grasso's noting that two broker-dealers "had walked through that door" (alluding to the door of his office) to express interest in acquiring the NYSE options business. The Chairman seemed to be underlining the potential of the business.

Competition for the NYSE options business appeared to become intense among three of the existing options exchanges. Although the reasoning behind competition among non-exchanges was understandable, the logic behind the competing of the exchanges was unclear since all any exchange had to do to acquire the relatively small amount of option products traded on the NYSE was simply to list them. They chose instead to attempt to purchase the NYSE's option business, though. American Stock Exchange President Ryan, in an apparent effort to tilt the bidding balance in the AMEX's favor, made at least one unannounced and unprecedented visit to the NYSE options floor. Currying the good will of option participants, he must have reasoned, might have been a deciding factor. President Ryan, in a subsequent meeting with NYSE option floor participants, held in what is believed to have been the AMEX Board Room, stated "you're worth more dead than alive". The obvious but unasked and unanswered issue that statement raised was that if the NYSE options business was worth more dead than alive, why were the AMEX, the CBOE, the PHLX, and possibly others pursuing acquisition so aggressively?

Agreement With The CBOE

The NYSE signed an agreement with the Chicago Board Options Exchange (CBOE) to "transfer" its options business (supporting documents #3 and #4). In an April 10, 1997 CBOE Circular (#97-19), the CBOE calls the transaction a "Relocation of the NYSE Options Program to the CBOE" (supporting document #5). When asked about the word "transfer" at a meeting with NYSE executives and several floor participants in approximately February, 1997, NYSE Counsel replied that was "just lawyer talk". It was probably very innocent but one wonders why it was necessary for the NYSE to continue a confidentially agreement with the CBOE (3.03 and 4.03 of supporting document #3).

NYSE Proposed Rule Change

On February 28, 1997, as required by law, the NYSE filed a proposed rule change (SR-NYSE-97-05) with the SEC that would allow the "transfer" of its options business to the CBOE. Article 3(A) vi of the proposed rule change required (supporting document #6) that owners of separated OTR's to surrender their OTR's to the exchange in order to be entitled to participate in the revenues from the newly created CBOE lease pool. The CBOE lease pool was a mechanism with a seven year life span, formed in an apparent attempt to benefit and placate the holders of activated OTR's, both separated and unseparated from their original equity seats. Had the terms of the lease pool been made fully known to the participants, it would never have been endorsed. The exchange called it a "housekeeping" move but that owners of non-separated OTR's, whether they were to participate in the newly created CBOE Lease Pool or not, were not being required to do. When NYSE Counsel was asked about the clause, he replied that no one in senior NYSE management anticipated the exchange's re-entry into the option business.

NYSE Proposed Rule Change Withdrawal

Subsequent to opposition being registered with the SEC regarding its proposed disposition of separated OTR's, the NYSE reversed its position by stating "although the exchange believes the surrender of such OTR's would be a permissible and appropriate housekeeping measure, it has determined not to require such a surrender as a condition of participation in the CBOE lease pool" (supporting document #7). The CBOE deal then proceeded to completion without an OTR surrender stipulation.

OTR's Defined by Who Owned Them

At around the time of the NYSE option business transfer, the exchange started to characterize separated OTR's as "without possible future benefits". When an OTR was paired with a NYSE membership or when it was being used to describe what a membership lacked (Ex/OTR), no such distinction was made. The OTR, then, varied in nature according to who owned it.

Track Record

In his 11/29/05 letter to New York Supreme Court Judge Charles Ramos (supporting Document #12), NYSE Counsel, Paul Vizcarrondo, Jr. seemed to highlight by implication, the exchange's unsuccessful "track record of entering new businesses on its own", but unknowingly fails to mention the apparent lack of constructive focus directed to its option division at the time, a phenomenon that seemed to have been widely recognized among the members of the floor community and was evidenced by the relatively scant resources devoted to its option division's advancement. To counter the proposition that the NYSE exited the option industry due to a lack of potential business or a lack of administrative talent, one only need observe the experience of the NYSE's two options administrators. To their credit they went on to found what is now one of the two busiest option exchanges in the country, the International Securities Exchange (ISE), the introductory announcement of which was made in the fall of 1998.

Exit and Entry

In terms of unrealized potential and lost livelihood for investors of both regular memberships and OTR's, as well as broker-dealer participants who could not relocate to the CBOE, the NYSE's exit and entry into the option business has been costly. Circumstances might have been different for them if the exchange had the occasion to gather those who would shortly evolve into principals of the forming ISE. It was also unfortunate for them considering that in 1997 the exchange had an established mechanism for operating an options exchange and the talent to administer and grow it. Additionally regrettable for them was that the exchange did not have access to the data it now has as exhibited by its chief economist's October 18, 2005 testimony before a Senate Banking Subcommittee (supporting document #11) supporting its existence in the option business. Making it a double-edged hardship for them was the NYSE's current potential willingness to acquire the ISE (according to a recent deposition of NYSE Director, Edgar S. Woolard, Jr., the ISE was the Big Board's current first pick, see Supplemental Document #13).

Tangentially, Chairman Grasso told the Wall Street Journal in May, 1999 that the options business had changed dramatically since the Big Board sold its small options operation to the CBOE in 1997. He added that at that point, the NYSE had made no decision to re-enter (supporting document #8).

Relevant Rules, Filings, Registration, and Contracts

Some of the sections of the NYSE Constitution, Rules, and Proposed Rule Changes that discuss or relate to OTR's are: 1) Rule 795(j)(iv) ,2) Article XIII of the Constitution that was in effect at the time of the issuance and activation of OTR's; 3) the NYSE Proposed Rule Change that mandated separated OTR surrender, subsequently withdrawn. The rule that the SEC finally did approve (SEC Release No. 34-38542 of 4/23/97), although the requirement that OTR's be surrendered was absent, had the NYSE describing all OTR's has having "only speculative value at the conclusion of the transfer .."; 4) the NYSE's Proposed Rule Change on November 1, 2003 relating to protection of investors; 5) the NYSE was, according to it transfer agreement with the CBOE, expressly allowed to re-enter the options business; 6) the current NYSE Constitution and Rules continue to describe the exchange's operation of an option business; and 7) in accordance with

federal regulation, the NYSE maintained an options exchange registration with the SEC during the time it conducted an options business but seemed to have found it necessary to maintain that registration even years after its exit from the business.

1) Rule 795 (j)(iv) the Board of Directors may dispose of the OTR in accordance with provisions of Section 6 of Article X of the Constitution.
(Examination of the provisions of this rule clearly shows that it relates solely to delinquent fee accounts.)

2) Article XIII of the NYSE Constitution of the 1980's, 1990's and later (it is difficult to discern the exact time frame due to the way Article XIII is currently published; see supporting document #9) seems to be a binding contract entered into by the NYSE with investors in Option Trading Rights (supporting document #1). The statement therein that; "The Board of Directors may, by the affirmative vote of a majority of directors then in office, adopt, amend and repeal such rules as it may seem necessary or proper relating to option rights holders ... " offers no justification for the elimination of an entire group of investors in the institution as being necessary or proper.

3) The original clause of the Proposed Rule Change (SR-NYSE-97-05) that would have eliminated separated OTR's was prudently withdrawn by the exchange in 1997 (supporting document #7). It must be assumed the exchange recognized that faced with the prospects of meager CBOE Lease Pool revenues or the vast OTR potential from the exchange's inevitable re-entry into the business, OTR investors would have opted for the latter. The exchange has recently declared that it has unilaterally decided to consider CBOE Lease Pool revenues* full and forced compensation for separated OTR's. That declaration only seemed to highlight the irony of the NYSE issuing its 1997 market prediction regarding the "speculative value" of OTR's since it was neither accurate nor appropriate, especially for an institution that owes its very existence to the process of investing/speculating by small investors and whose function it is to regulate the advice given by companies regarding investments in their own companies. In addition, "all OTR's" seemed to have been arbitrarily assigned differing values according to who owned them and those values were at odds with, until the April 25, 2005 "delisting", the NYSE's own posted market in them.

** The total revenues to CBOE lease pool participants in its seven year life were $34,293, an amount that would be considered high, relative to the approximate $8,400 in revenues that were derived from a participant leasing out an OTR on the NYSE during the previous seven year period. The $34,293 figure would be considered significantly low, however, relative to the going market lease rate for CBOE trading permits, an example of which were CBOE trading permits deriving $4,000 per month in the spring of 1998 while CBOE Lease Pool Permits, that enabled the lessee to access the same options markets, were being leased out for $500 per month. More importantly, as the facts and history indicate, is that the $34,293 number was both decidedly low and clearly unwanted if it meant OTR investors were to forfeit their rights on the NYSE or whatever it was to become at the time of its inevitable re-entry.*

4) The exchange's own proposed rule change regarding their function as an insurer of fairness in markets:

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the requirement under section 6(b)(5)5 that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and protect the mechanism of a free and open market and, in general to protect investors and the public interest.

5) Through a clause in its agreement with the CBOE, the NYSE was expressly permitted to re-enter the option business at will (supporting document #3).

6) Article VII, Section 4 of the NYSE Constitution continues uninterruptedly to date (to the best of our knowledge) to describe how options contracts "occurring on the exchange" shall be treated. Also, NYSE Rules 700-795 continue uninterruptedly to date (to the best of our knowledge) to set forth procedures for effecting option trades on the NYSE.

7) A telephone call to the SEC in 2000 revealed that the NYSE had not yet surrendered its official option exchange registration, the assumption being that the registration continues to be in force to date.

"Core Business"

Management's stated aim in 1997 was to exit the option business so that it could focus on its "core equity business". In a world of imminent globalization, however, one stop shopping, 24 hour trading and intense option industry expansion, (prospects that the NYSE should have been in a much better position to see than most), the exchange seemed to proceed curiously into its future employing a strategy that lacked a line of multiple financial products.

Conclusion

The NYSE's April, 2005 announcement of its re-entry into the options markets validates the reasoning behind OTR owners' long term OTR investment decisions. This report calls into question, among other issues, the exchange's interpretation of the implied contracts into which it entered with Option Trading Right investors during its 13 ½ year option business first phase and its interpretation of their uninterrupted validity now that its "exit' from the business is coming to its predictable conclusion.

It should be noted that OTR investors do not expect to participate in the ARCA cash/stock distribution offered to regular members, presumably for their share in the physical assets of the exchange. If regular members opt to surrender their equity and option trading rights as a precondition thereof, that is their prerogative. OTR investors, on the other hand, expect, as they have been saying unofficially since the 1980's and officially since their 1997 refusal to surrender their OTR's, that their original investment in the rights to effect option trades on the NYSE or whatever it was/is to become by merger, acquisition, or both, afford them just that .... the full rights to trade all options under the auspices of the NYSE or its successor entity (NYSE Group in this case), management's declaration of "extinguishing trading rights" notwithstanding. The legitimacy of the claim that the NYSE is becoming the NYSE Group and is therefore

released from its obligations is an argument that will have to be decided by the SEC and/or the courts but that concept raises a variety of serious issues regarding adherence to the letter versus the spirit of the law. Also to be similarly resolved, if other separated OTR factors don't prevail as dominant, is the existence or even necessity of precedent of trading rights of an acquiring exchange converting to trading rights on the acquired exchanges. It is noteworthy that whether the NYSE/ARCA deal consummates or not is irrelevant since the exchange has publicly declared its intention to achieve growth by re-entering the option business. The undersigned fully anticipate the NYSE to continue along its evolving path of exchange acquisitions to achieve its goals.

Statement

On April 1, 2004, NYSE President Thain announced that he would present the idea of re-entry into the options business to the Board of Directors. Since then he has made several public comments about how NYSE growth would be enhanced by new products such as options. President Thain is correct in his assessment. OTR investors recognized the combination of options growth and the NYSE name as being a worthy investment when they bought their OTRs in the 1980's. OTR investors recognized the combination of options growth and the NYSE name as being a worthy investment when they bought their OTR's in the 1990's. OTR investors recognized the combination of options growth and the NYSE name as being a worthy investment when they filed SEC comment letters in 1997 pressuring the exchange from forcing the surrender of separated OTR's. OTR investors recognized the combination of options growth and the NYSE name as being a worthy investment when from the time of President Thain's April 1, 2004 announcement until now they were unwilling to show an offer at any price in the official NYSE posted OTR market.

Reading what the newly formed NYSE Group expects to accomplish is almost like reading an outline of the business plans of OTR investors. In its zeal to form a globally-competitive, electronic, securities super market by the ARCA and future acquisitions; the exchange seems to expect to derive revenues from leasing trading privileges in its products and expects significant growth in such revenues to come from new products like options. It almost seems like the exchange is attempting to force its investors out so that it can assume their businesses.

OTR buyers were small investors in an industry with large potential; and in an exchange with a heretofore long standing good name. They recognized value and the certainty of options indispensability to an expanding primary market.
It is ironic that a venerable, old institution like the New York Stock Exchange, in whom the citizens of America and indeed the citizens of the world place their trust on a daily basis to ensure ultimate fairness in markets, an institution that owes its very existence to the process of small investors making and executing investment selections, would endeavor to disenfranchise those who chose to invest in that institution, itself.

On December 6, 2005 the approximately 1,316 regular members with OTR's and the approximately 50 members whose OTR's had been gifted back to them at the expense of separated OTR investors, voted to surrender their equity and option trading rights so that they could participate in the ARCA merger.

Investors in separated OTR's have made no such surrender and ask the SEC, based on the issues set forth in this report, to recognize them as the full and rightful trading licensees of all present and future NYSE option products.

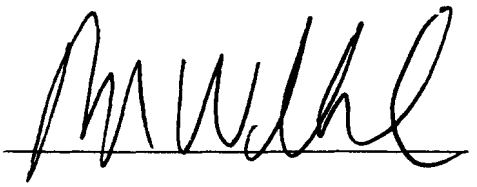
Respectfully submitted,

Andrew Rothlein
Michael Wallach
Gregory Tenbekjian
Ken Marks
Pamela Rothlein
Enid Wallach
Mary Ann May

Investor/Owners NYSE Option Trading Rights

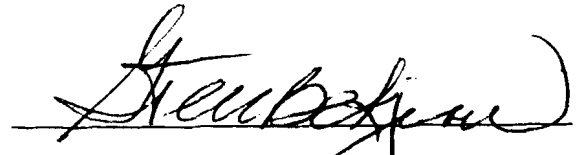
Andrew Rothlein
308 Roaring Brook Road
Chappaqua, N.Y. 10514

Owner NYSE Separated Option Trading Rights



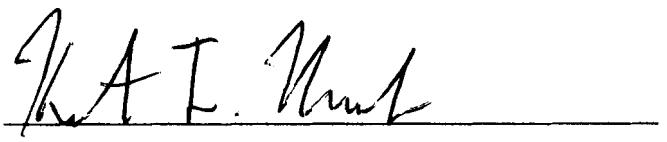
Michael C. Wallach
116 Harold Road
Woodmere, N.Y. 11598

Owner NYSE Separated Option Trading Rights



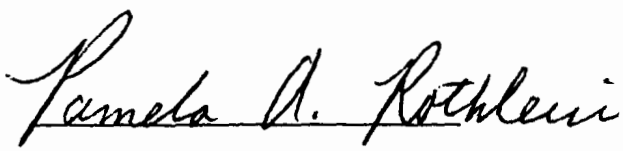
Gregory Tenbekjian
72 West Allendale Avenue
Allendale, N.J. 07401-1718

Owner NYSE Separated Option Trading Rights



Ken Marks
4 Southgate Drive
Cortlandt Mnor, N.Y. 10567

Owner NYSE Separated Option Trading Rights



Pamela A. Rothlein
308 Roaring Brook Road
Chappaqua, N.Y. 10514

Owner NYSE Separated Option Trading Rights

Enid Wallach
116 Harold Road
Woodmere, N.Y. 11598

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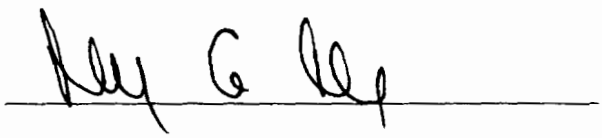


Mary Ann May
c/o Andrew Rothlein
308 Roaring Brook Road
Chappaqua, N.Y. 10514

Owner NYSE Separated Option Trading Rights

ARTICLE XIII

OPTIONS TRADING RIGHTS

Sec. 1. A member described in subsection (a) of Section 1 of Article IX (including such a member who has leased his or her membership as permitted by Section 2 of that Article) may lease or transfer the right of entering physically upon the trading floor for the purpose of effecting transactions in options that are from time to time admitted to dealings on the Exchange (the "options trading right") to any person approved by the Exchange, provided that such member has not previously leased or transferred such right. The lessee or transferee of such right (the "options trading right holder") shall not, by virtue of such lease or transfer, be a member of the Exchange for any purpose of the Constitution or Rules of the Board of Directors, but may maintain facilities on the trading floor for the execution of orders to buy and sell options that are from time to time admitted to dealings on the Exchange ("Exchange options").

An options trading right holder who has acquired an options trading right by transfer may lease or transfer such right to any person approved by the Exchange.

A member described in subsection (a) of Section 1 of Article IX who has leased or transferred the options trading right relating to his or her membership shall not, during the term of such lease or after such transfer, exercise such right. If a member described in subsection (a) of Section 1 of Article IX transfers the options trading right relating to his or her membership and thereafter transfers such membership as provided in Article XI unaccompanied by an options trading right, the transferee shall not, as a result of such transfer, acquire an options trading right. Any member described in subsection (a) of Section 1 of Article IX who has transferred the options trading right relating to his or her membership, or who has acquired by transfer such a membership which does not include an options trading right, may, if approved by the Exchange, acquire an options trading right and may thereafter lease or transfer such right, either together with or apart from his or her membership.

Except as expressly provided in the lease agreement between a member who has leased his or her membership as permitted by Section 2 of Article IX (the "lessor") and a person approved by the Exchange (the "lessee"), the options trading right relating to such membership shall remain with the lessor.

The Board of Directors may, by the affirmative vote of a majority of directors then in office, adopt, amend and repeal such rules as it may deem necessary or proper relating to options trading right holders, the approval and disapproval thereof, the transfer or lease of options trading rights, the regulation of the activities and business associations of, and the conduct of business by, options trading right holders and brokers and dealers with which they are associated as partners, officers or employees, the imposition of charges with respect to, and the discipline of, options trading right holders and such brokers and dealers, and such other similar matters as the Board shall deem appropriate.

Sec. 2. The Board of Directors may at any time and from time to time and subject to such rules as the Board may from time to time adopt, issue options trading rights to any one or more or all persons which are members in good standing of any national securities exchange registered with the Securities and Exchange Commission or contract market designated as such by the Commodity Futures Trading Commission, which exchange or market is located in the United States of America; provided, however, that no such options trading right so issued to any person which is a member of the New York Futures Exchange, Inc. shall continue to confer any right beyond the third anniversary of the commencement of trading on the Exchange of any Exchange option and no other such options trading right so issued to any other person shall continue to confer any right beyond the first anniversary of such commencement. Any person to which any one or more options trading rights are issued pursuant to this Section shall be included within the term "options trading right holder" as defined in Section 1 of this Article, but no such options trading right so issued may be leased or transferred by the person to which issued. Notwithstanding the foregoing, any person to which any option trading right is issued pursuant to this Section, other than a natural person, may designate as the nominee of such person a natural person who is approved by the Exchange to exercise the right conferred by such option trading right and may change such designation from time to time, subject to the approval of the Exchange.

[This Article XIII had not been approved by the Securities and Exchange Commission as of September 16, 1983.]

Date: May 26, 2005

To: NYSE Members and Member Organizations

From: John A. Thain

Subject: NYSE Seat Market and OTRs

As noted previously, in connection with the announced merger with Archipelago, NYSE memberships will be converted into the right to receive cash and stock in the new holding company NYSE Group, Inc. This will have the result of extinguishing all existing trading rights inherent in, or derived from, NYSE memberships -- including option trading rights ("OTRs").

OTRs have conferred no trading privileges since the NYSE closed its options trading floor in 1997. In addition, as noted, OTRs, along with all other trading rights inherent in, or derived from, the NYSE memberships, will be extinguished in the merger with Archipelago. In the transaction with Archipelago, NYSE memberships -- with or without OTRs -- will all receive the same consideration. Separated OTRs will be extinguished for no consideration. They will have no value.

For further information, please contact Steven L. Fuller, Director-Membership Services (212.656.2071/sfuller@nyse.com) or Eileen McElduff, Senior Membership Coordinator (212.656.8499/emcelduff@nyse.com.)

CONFORMED COPY

NYSE OPTIONS BUSINESS TRANSFER AGREEMENT

by and between

NEW YORK STOCK EXCHANGE, INC.

and

CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED

dated as of February 5, 1997

TABLE OF CONTENTS

This Table of Contents is not part of the Agreement to which it is attached but is included for convenience of reference only.

NYSE OPTIONS BUSINESS TRANSFER AGREEMENT, dated as of February 5, 1997, by and between the New York Stock Exchange, Inc., a New York not-for-profit corporation ("NYSE"), and the Chicago Board Options Exchange, Incorporated, a Delaware corporation ("CBOE"). Capitalized terms not elsewhere defined herein have the meanings set forth in Article XII.

WHEREAS, NYSE has determined to cease maintaining a trading facility for transactions in Options and to facilitate transfer of the options business conducted through its present facilities (the "Options Business");

WHEREAS, CBOE, pursuant to the terms hereof, wishes to obtain transfer to it of the Options Business;

WHEREAS, CBOE wishes to provide incentive to encourage certain persons and entities presently engaged in the Options Business to transfer to CBOE and to continue a business in options transactions, and wishes to compensate certain persons and entities instrumental in facilitating operations of the Options Business;

WHEREAS, NYSE, pursuant to the terms hereof, wishes to facilitate such transfer to CBOE and such other actions by CBOE; and

WHEREAS, NYSE and CBOE wish to make certain other business arrangements as set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

CLOSING; PURCHASE PRICE; AND RELATED MATTERS

1.01 Closing. The Closing shall take place at the offices of NYSE, 11 Wall Street, New York, New York 10005, or at such other place, or in such other manner, as NYSE and CBOE mutually agree, at 9:00 A.M. New York time, on the Effective Date. As a part of the Closing, CBOE shall pay, or shall have paid, to NYSE the Purchase Price in the manner herein contemplated and CBOE and NYSE each shall execute and deliver the Operative Documents hereunder and do such other acts and things

required to be done by them respectively hereunder at the Closing.

1.02 Purchase Price. In addition to its other obligations hereunder, as consideration for the transfer to CBOE of the Options Business as contemplated hereby, and for the grant of license pursuant to the License Agreement, CBOE shall pay, at or prior to the Closing, a "Purchase Price" of $5,000,000, by wire transfer of immediately available United States funds, as follows: (1) the sum of $1,200,000 to NYSE, with payment to be made to such account number or numbers as NYSE shall reasonably direct by written notice given to CBOE at least 2 Business Days before the day of Closing, and (2) the sum of $3,800,000 to be paid into the escrow account contemplated by the Escrow Agreement and to be distributed pursuant to the Escrow Agreement.

ARTICLE II

CBOE TRADING PERMITS; NYSE/CBOE OPTIONS FLOOR; AND RELATED MATTERS

2.01 Creation of Special CBOE Trading Permit, NYSE/CBOE Options Floor, and Other Rights. (a) Promptly after the Execution Date, CBOE shall complete all corporate actions necessary to amend the CBOE Rules in order to authorize the special CBOE trading permit (the "Permit") described in Section 2.02, and otherwise to perform its obligations hereunder, and shall file such amendments with the Commission under the Act. CBOE shall use its best efforts to obtain Commission approval of such amendments and any other Governmental or Regulatory Authority approvals required to enable it to fulfill its obligations hereunder.

(b) Periodically, but no less frequently than monthly, after the Execution Date, and at such other times as NYSE reasonably requests, CBOE shall advise NYSE of the status of completion of the NYSE/CBOE Options Floor and the status of the filings and other matters to be completed by CBOE pursuant to this Agreement.

(c) The "Effective Date" shall be April 28, 1997, and both parties agree to use all reasonable efforts to complete all requisite work and other actions required by them, respectively, hereunder (including but not limited to construction by CBOE of the NYSE/CBOE Options Floor) by that date. If (1) due to events not reasonably within the control of the parties, it is not possible by the aforesaid date to commence the trading of Options on the NYSE/CBOE Options Floor or (2) on or before the aforesaid date, (i) the Commission fails to approve changes to CBOE Rules

or NYSE Rules necessary to the operation of the NYSE/CBOE Options Floor, (ii) any other Governmental or Regulatory Authority whose approval is required to enable CBOE or NYSE to fulfill its respective obligations hereunder fails to provide such approval, or (iii) either the Commission or any other Governmental or Regulatory Authority takes action which precludes closing of the transaction on the aforesaid date, then the parties shall communicate regularly for the purposes of setting another Effective Date, which shall be set by mutual agreement on the earliest subsequent date on which the trading of Options can commence on the NYSE/CBOE Options Floor. NYSE shall use its best efforts to obtain Commission approval of such amendments and any other Governmental or Regulatory Authority approvals required to enable it to fulfill its obligations hereunder.

2.02 CBOE Trading Permit. Described below are the characteristics, rights and privileges of the Permit, all of which shall be irrevocable and not subject to amendment during the Permit's term set forth below, except to the extent (1) a Permit may be revocable pursuant to CBOE Rules and in a manner consistent with revocability of regular CBOE memberships, or (2) the revocation or amendment of the terms of the Permit may be required under rules and regulations of any Governmental or Regulatory Authority applicable to the revocation or amendment of the rights and privileges of CBOE membership. The Permit shall

(a) have a duration of seven years, commencing with the Effective Date, with all its characteristics, rights and privileges to be effective throughout its duration;

(b) subject to applicable provisions of the Act and CBOE Rules, allow each Permit "Holder" (which term shall mean the owner or lessee) of the Permit, or nominee of a Holder as permitted hereby, to act as a Floor Broker or Market Maker on CBOE in NYSE Options on the NYSE/CBOE Trading Floor at all times a holder of a regular CBOE membership may act as a Floor Broker or Market Maker on the Principal CBOE Trading Facility;

(c) be subject, and subject its Holder and any nominee permitted hereby, to no more than the same obligations of ownership under the CBOE Rules as are applicable to holders or nominees of regular CBOE memberships, except as may be otherwise specifically provided herein and except that CBOE shall charge no fees in connection with (1) an application for approval as a Permit Holder or as the nominee of a Permit Holder arising out of the initial issuance of a Permit pursuant to Section 2.04 , (2) an application for approval as a member of CBOE or as the nominee of a member by a Person who is the initial Permit Holder of a Permit

issued pursuant to Section 2.04 or its initial nominee, and (3) an application for approval as the nominee of a member of CBOE by a Person who at the time of such application is the nominee of a Specialist Firm in respect of a Permit issued pursuant to Section 2.04;

(d) not be sold, leased or transferred, except as otherwise permitted hereunder, for the period of one year after the Effective Date, after which, at the discretion of the Permit "Owner" (which term shall mean the Person in whose name the Permit is issued by CBOE), the Permit may be sold, leased or transferred in the same manner as CBOE memberships may be sold, leased or transferred in accordance with CBOE Rules to any Person satisfying the requirements to be a Permit Holder under CBOE Rules; CBOE hereby agrees to use its best efforts to maintain a market for the sale of Permits for the duration of the Permits; any sale not in violation hereof shall transfer to the purchaser ownership of and all rights in the Permit, and any lease not in violation hereof, unless specifically providing otherwise, shall transfer to the lessee during the lease term all rights to act as a Floor Broker or Market Maker under, and as otherwise contemplated by, the Permit;

(e) allow each Permit Holder, or nominee permitted hereby, reasonable telephone or other electronic access to the Principal CBOE Trading Facility for the purpose of "trading by order" as principal all those classes of Options that are listed on both NYSE and CBOE on the last trading day preceding the Effective Date, as set forth in Schedule 2.02(e), which Schedule is subject to amendment pursuant to Section 13.13;

(f) allow each Permit Holder, or nominee permitted hereby, reasonable telephone or other electronic access to the Principal CBOE Trading Facility for the purpose of "trading by order" as principal all those classes of Options, other than those referred to in Schedule 2.02(e), up to an aggregate during any calendar quarter of twenty percent (20%) of the sum of the Permit Holder's or nominee's total in person contract volume as principal pursuant to Section 2.02(b) and such Permit Holder's contract volume pursuant to Section 2.02(e) during such calendar quarter;

(g) allow each Permit Holder, or nominee permitted hereby, to qualify and act, in respect of NYSE Options, in accordance with and subject to the applicable CBOE Rules and the limitations of the Permit, as a DPM, Market-Maker or Floor Broker and in such other capacities as generally are available to regular CBOE members from time to time; and

(h) provide such other rights and privileges as CBOE shall include as a part thereof.

2.03 NYSE/CBOE Options Floor.

(a) Commencing on the Effective Date, CBOE shall allow trading of NYSE Options under CBOE Rules by Permit Holders and nominees permitted hereby on the "NYSE/CBOE Options Floor" as described herein. (A diagram of the presently proposed layout and location of the NYSE/CBOE Options Floor is attached as Schedule 2.03(a).) The NYSE/CBOE Options Floor shall be on the second floor of the building currently housing CBOE's Principal Trading Facility and shall be substantially as shown in said diagram unless otherwise agreed to (1) prior to the issuance of Permits, by CBOE and a majority of the Floor Committee referred to below, or (2) after the issuance of Permits, by CBOE after consultation with Permit Holders or their representatives. CBOE shall allow a group of no more than 10 representatives of Persons to whom Permits are proposed to be issued hereunder (which group NYSE shall assist CBOE to arrange) to provide, until the Effective Date, general consultation and recommendations in the design of the NYSE/CBOE Options Floor and the determination of the systems and facilities available for use thereon (said group being herein called the "Floor Committee"). CBOE shall provide the Floor Committee reasonable access to CBOE personnel to consult and make recommendations in that regard and shall consider input from the Floor Committee in determining the ultimate design, systems and facilities of the NYSE/CBOE Options Floor.

(b) CBOE shall configure the NYSE/CBOE Options Floor for options trading with trading stations, monitors, communication systems, television screens for news purposes, major news wire services and other support facilities which are of no lesser quality and utility in all material respects to those now and hereafter used to support Options trading on the Principal CBOE Trading Facility. Trading systems on the NYSE/CBOE Options Floor will include, but not be limited to, the RAES automatic execution system, the electronic book, ILX displays, hand-held and fixed trading terminals and PAR workstations for receipt of orders. Other systems that are generally made available on the Principal CBOE Trading Facility will concurrently (subject to reasonable time disparities resulting from differences in the results of pilot programs and the necessities of phase-in) be made generally available on the NYSE/CBOE Options Floor.

2.04 Offer and Issuance of Permits to Transferring NYSE Firms. (a) In the manner herein specified, CBOE shall offer

to each of the (1) NYSE Specialist Firms, including joint books, ("Specialist Firms") doing business on or through the options facilities of NYSE on December 5, 1996 (the "Cut Off Date"), as set forth under Column 1 of Schedule 2.04(a)(1), the right to receive on the Effective Date (or such later date as may be permitted hereunder) that number of Permits equal to the number of NYSE Floor Badges ("Badges") set forth opposite each such Specialist Firm's name under Column 2 of Schedule 2.04(a)(1), subject to fulfillment of the conditions set forth in Section 2.04(c); and (2) NYSE Non-Specialist Firms, including sole proprietors, ("Non-Specialist Firms") doing business on or through the options facilities of NYSE on the Cut Off Date, as set forth under Column 1 of Schedule 2.04(a)(2), the right to receive on the Effective Date (or such later date as may be permitted hereunder) that number of Permits equal to the number of Badges set forth opposite each such Non-Specialist Firm's name under Column 2 of Schedule 2.04(a)(2), subject to fulfillment of the conditions set forth in Section 2.04(c) and the additional conditions set forth in Section 2.04(d). Notwithstanding any contrary provision of this Agreement, CBOE may not waive any of the conditions under Sections 2.04(c) or 2.04(d), in whole or in part, as to any Person without the prior approval of NYSE, which shall not be unreasonably withheld.

Specialist Firms and Non-Specialist Firms are herein sometimes collectively called "Firms" and individually called a "Firm".

(b) Promptly after the Execution Date, CBOE shall notify each Firm listed on Schedule 2.04(a)(1) or Schedule 2.04(a)(2) of that Firm's right to receive a Permit or Permits, subject to the conditions applicable to that Firm, and, as promptly thereafter as possible, shall provide to each such Firm an application form and a complete written description of the manner in which the Firm can apply for a Permit and in which any nominee of the Firm can apply in order to represent the Firm on the CBOE floor as permitted hereby and by the Permit. CBOE shall fulfill such notification obligation by (1) delivering the required information to the attention of an Executive Officer or partner at each Firm by hand or by registered or certified mail, in either event at the respective address set forth under Column 3 on Schedule 2.04(a)(1) or on Schedule 2.04(a)(2), respectively, or such other address as NYSE hereafter shall provide, and (2) upon NYSE's request, providing copies of such information to NYSE in legible printed form, susceptible of distribution by NYSE to the Firms and in sufficient quantity to respond to requests for such information.

(c) CBOE shall condition issuance of each respective Permit to a Firm upon (1) the Closing taking place under this Agreement, (2) the Firm's (i) having notified CBOE of its

intention to apply for one or more Permits on or before February 28, 1997 or such later date prior to the Closing as CBOE may permit and (ii) qualifying to be a Permit Holder pursuant to CBOE Rules, (3) the Firm's (other than a sole proprietor's) designation of an individual nominee, in accordance with Section 2.3 of the CBOE Constitution, pursuant to the CBOE Rules and as permitted by this Agreement, to represent the Firm with respect to that Permit, (4) the Firm's nominee for that Permit qualifying to be a Permit Holder pursuant to CBOE Rules, (5) a Badge being in effect on behalf of the Firm on the last trading day preceding the Effective Date which Badge has not been attributed to any other Permit, (6) CBOE's receipt of notice from NYSE as to the number of such valid Badges on the last trading day preceding the Effective Date for each Firm listed in Schedule 2.04(a)(1) or Schedule 2.04(a)(2), and, with respect to a Non-Specialist Firm, the name of each individual in whose name a Badge was issued on the Cut Off Date, (7) CBOE's receipt of the written confirmation contemplated by Section 2.04(h) as to the Firm or other Person, and (8) the Firm's nominee or the sole proprietor, as the case may be, for a given Permit presenting himself or herself at CBOE on the Effective Date (or such later date as may be permitted hereunder) prepared to there undertake business on the NYSE/CBOE Options Floor on behalf of the Firm or as a sole proprietor, as the case may be.

(d) (1) As an additional condition to the issuance of each respective Permit to a Non-Specialist Firm referred to under Column 1 of Schedule 2.04(d), the nominee who initially is to qualify and act under such Permit must be the individual in whose name the Badge was issued on the Cut Off Date, as set forth under Column 2 of Schedule 2.04(d) (the "Required Nominee"). Should the Required Nominee fail personally to qualify as and become such nominee by the Effective Date (or such later date as may be permitted hereunder) for any reason, including but not limited to the Required Nominee's death or incompetency prior to such qualification, the Permit which otherwise would have been issued to that Firm with respect to such nominee shall not be issued to that Firm but shall, instead, become a part of the Permit Lease Pool contemplated under Section 2.07.

(2) During the period of one year after the Effective Date, should the Required Nominee fail for any reason to act as nominee with respect to a Permit in the capacity of a Floor Broker or Market Maker by effecting one or more transactions in person on the NYSE/CBOE Options Floor on at least 170 days of that year, then, subject to appointment of a substitute Required Nominee pursuant to Section 2.04(f), the Permit under which the Required Nominee was permitted to act shall be revoked by CBOE and become a part of the Permit Lease Pool contemplated under Section 2.07. At the end of such one-

year period, nominees under Permits issued to Non-Specialist Firms, and not theretofore revoked, may be individuals other than Required Nominees, without revocation of the Permit or other penalty.

(e) If subsequent to the Cut Off Date but before issuance of a Permit to the Firm, any one or more Firms to which a Permit or Permits are to be offered hereunder shall become a party to any merger, combination, consolidation, amalgamation, split-up, change of control, creation or dissolution of a joint book, or other action effecting a material change to the business, or corporate or organizational structure, or control of that Firm, then CBOE, acting pursuant to CBOE Rules and in accordance with usual and customary CBOE policies generally applicable to appointments or transfers thereof and in good faith, shall determine the number of Permits, if any, the Firm or Firms so involved shall be offered hereunder; provided, however, that no Firm or Firms, however combined or changed, shall become entitled to receive, in the aggregate, more Permits than the total number of Permits which that Firm or Firms otherwise would have been entitled to receive pursuant to Section 2.04(a).

(f) If a Required Nominee who has commenced to act as a nominee with respect to a Permit issued hereunder should, within one year after the Effective Date, die, be adjudged an incompetent, make or suffer the appointment of a conservator or other Person lawfully entitled to control the rights and properties of such Required Nominee, become disabled, or otherwise lose or suffer loss or suspension of the right or capacity to act as a nominee, then CBOE, acting pursuant to CBOE Rules and in accordance with usual and customary CBOE policies and in good faith, shall make an appropriate determination as to whether or not to allow a substitute Required Nominee with respect to such Permit. If it determines to allow such substitution, CBOE shall allow the Firm a reasonable opportunity to appoint a substitute Required Nominee to qualify under CBOE Rules; and upon such qualification, CBOE shall allow such person to act in the place and stead of the Required Nominee with respect to the Permit.

(g) If a Permit Owner, during the one-year prohibition on sale, lease or transfer of the Permit contemplated by Section 2.02(d), shall die, be adjudged an incompetent, make or suffer the appointment of a conservator or other Person lawfully entitled to control the rights and properties of such Owner, merge, combine, amalgamate, dissolve, be subject to a change of control, or otherwise lose or suffer loss or suspension of the right to own or control the Permit, then CBOE, acting pursuant to CBOE Rules and in accordance with usual and customary CBOE policies and in good faith, shall make an appropriate

determination as to whether or not to allow the Permit to remain valid after any devise, bequest, transfer, sale, lease, or other disposition (collectively, a "disposition"), as the case may be, resulting from the aforesaid occurrence. If CBOE determines to allow the Permit to remain valid, CBOE shall allow the Owner or his or its conservator, estate or successor a reasonable opportunity to take the requisite action within CBOE Rules to accomplish such disposition with respect to the Permit. If CBOE does not allow the Permit to remain valid, or if the Permit or any other Permit is sold, leased or transferred during said one-year period in violation hereof, then any such Permit shall be revoked by CBOE and become part of the Lease Pool contemplated under Section 2.07. It is acknowledged that, under certain circumstances, a Required Nominee, Permit Owner and Firm may be the same entity; accordingly, the provisions of Sections 2.04 (e), (f) and (g) shall be read together in determining any discretionary action to be taken by CBOE hereunder with respect thereto.

(h) Notwithstanding any contrary provision of this Agreement, CBOE shall not issue a Permit pursuant to Section 2.04 to any Person if prior to the Effective Date NYSE shall have notified CBOE in writing that such Person, and any Persons affiliated with such Person in connection with any aspect of the Options Business conducted by, for, through or on behalf of such Person, have an aggregate outstanding material financial obligation to NYSE of not less than $500, provided that NYSE may not give such notice to CBOE in respect of more than 10 Permits that would otherwise be issuable.

(i) CBOE shall with reasonable promptness notify NYSE of any event (including, but not limited to, the failure of a Person to comply with a condition to issuance of a Permit under Section 2.04 or any determination made by CBOE under Section 2.04(e), (f) or (g)) which changes or affects (1) the Person to whom a Permit otherwise would be issuable hereunder, (2) the status of a Required Nominee as such, or (3) the number of Permits available for the Permit Lease Pool.

(j) CBOE shall issue the requisite number of Permits to a Firm as called for in accordance with this Article II upon the later of (1) fulfillment of all conditions for such issuance under Section 2.04(c) or Section 2.04(d), as applicable, or (2) the Effective Date.

2.05 DPM Status. Each Specialist Firm listed on Schedule 2.04(a)(1) (subject to adjustment pursuant to Section 2.04(e)), and to which Permits are issued hereunder, shall on the Effective Date be designated as the CBOE Designated Primary Market Maker ("DPM"), as that term is defined under CBOE Rules,

in all classes of NYSE Options for which such Specialist Firm was, immediately preceding the Effective Date, a specialist at NYSE as shown on Schedule 2.05, which schedule is subject to amendment pursuant to Section 13.13. Subject to the right of CBOE to appoint and terminate the appointment of any DPM for failure to satisfy the requirements applicable to DPMs under CBOE Rules as in effect from time to time, each such Specialist Firm shall be permitted to continue to act as DPM in such classes so long as it is acting pursuant to the Permit and, thereafter, upon its obtaining and maintaining regular CBOE membership. In the event any such Specialist Firm ceases to act as a DPM in such classes, CBOE shall appoint a new DPM in accordance with CBOE Rules provided that during the first seven years after the Effective Date the members of any such new DPM shall be acting pursuant to Permits.

2.06 Designation of New Options Classes. During each of the first seven years after the Effective Date, CBOE shall allocate put and call equity Options on at least 14 securities underlying such Options for the NYSE/CBOE Options Floor to DPMs, the members of which are acting pursuant to Permits.

2.07 Permit Lease Pool. (a) Promptly after issuance of the Permits called for by Section 2.04, CBOE shall create and thereafter maintain for 7 years' duration a "Permit Lease Pool" consisting of the number of Permits which is the sum of (1) the number of Permits equal to the difference between 75 Permits and that number of Permits issued pursuant to Section 2.04, (2) any Permits revoked pursuant to Section 2.04(d)(2) for failure of a Required Nominee to act in a required capacity, and (3) any Permits revoked pursuant to Section 2.04(g) as being in violation of the one year prohibition on sale, lease or other transfer under Section 2.02(d). CBOE shall use its best efforts to lease out all Permits in the Permit Lease Pool by means of a public auction, or other competitive process reasonably acceptable to NYSE. CBOE shall remit the gross proceeds from such auction or other process periodically, but no less frequently than quarterly, on a pro rata basis to each of the OTR Owners on the Effective Date, and to the respective address, as set forth on Schedule 2.07 (each a "Lease Pool Recipient"), which Schedule is subject to amendment pursuant to Section 13.13 to, among other things, reflect changes of ownership of such OTRs and address changes until that date; provided, however, that notwithstanding any contrary provision hereof, CBOE (i) shall not make any payments to any Lease Pool Recipient or its assignee until CBOE has received written authorization from NYSE to commence payments to such Lease Pool Recipient and (ii) shall pay to any Person NYSE directs, in a writing to CBOE, any such amounts so withheld and any other periodic payments (withheld amounts to be paid in a lump sum without interest and periodic payments to be paid as and

when they otherwise would have been payable to the Lease Pool Recipient), and, after making any such payments as NYSE so directs, CBOE shall pay any remaining periodic payments at their regular payment dates to the Lease Pool Recipient or as otherwise provided in this Section 2.07.

(b) After the Effective Date, any transfers of OTRs permitted by NYSE shall be transferred without (i.e., "ex") any right to participate in the Permit Lease Pool. During the term of the Permit Lease Pool, upon receipt by CBOE from a Lease Pool Recipient of such reasonable documentation as CBOE may request, CBOE shall direct the periodic payments with respect to all unpaid amounts payable to that Lease Pool Recipient (other than payments to be made to or at the direction of NYSE as contemplated by Section 2.07(a), to any other Person or address designated by the Lease Pool Recipient; if payment is directed to another Person, that Person shall become the Lease Pool Recipient in place of the designating Person with respect to those payments for all future purposes hereunder until such time as another Person is so designated to receive payments and becomes the Lease Pool Recipient in the aforesaid manner. Once CBOE has tendered a periodic or other payment of Lease Pool proceeds in the manner designated in this Section 2.07, CBOE shall have no further obligation with respect to that payment.

2.08 Moving Expenses. CBOE shall reimburse usual and customary moving expenses, to a maximum of $10,000 per Permit, incurred by each sole proprietor receiving a Permit hereunder or nominee of a Permit Holder (which nominee commences work on the NYSE/CBOE Options Floor) in connection with the sole proprietor or nominee and/or his or her immediate family moving their primary residence to the Chicago metropolitan area, provided that (1) such move is effected from outside the Chicago metropolitan area no later than nine months after issuance of the Permit, (2) appropriate vouchers or other evidence of the incurrence of the moving expenses are provided to CBOE upon its request, and (3) the nominee or sole proprietor, at the time reimbursement is sought, is engaged in trading Options at CBOE.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF NYSE

NYSE hereby represents and warrants to CBOE as follows:

3.01 Corporate Existence of NYSE. NYSE is a not-for-profit corporation, duly incorporated, validly existing and in good standing under the Not-For-Profit Corporation Laws of the State of New York. NYSE has full corporate power to execute and

deliver this Agreement and the Operative Documents, perform its obligations hereunder and thereunder and consummate the transactions contemplated hereby and thereby.

3.02 SRO Status. NYSE is an SRO registered as a national securities exchange under the Act and has in effect rules in accordance with the provisions of the Act for the trading of Options which may be issued by the OCC in accordance with its by-laws. Such rules (including but not limited to the Constitution and Rules of NYSE, stated policies and interpretations thereof, and any amendments thereto, inclusive of amendments required to be filed pursuant to this Agreement, upon approval thereof by the Commission), as the same may be amended from time to time in accordance with applicable rules and regulations of the Commission, are herein referred to as the "NYSE Rules".

3.03 Confidentiality Agreement. The Confidentiality Agreement is in full force and effect and NYSE has committed no material breach thereof.

3.04 Authority. The execution and delivery by NYSE of this Agreement and the Operative Documents, and the performance by NYSE of its obligations hereunder and thereunder, have been duly and validly authorized by the Board of Directors of NYSE, no other corporate action on the part of NYSE or its members being necessary. This Agreement has been duly and validly executed and delivered by NYSE and constitutes, and upon the execution and delivery by NYSE of the Operative Documents, such Operative Documents shall constitute, legal, valid and binding obligations of NYSE, enforceable against NYSE in accordance with their respective terms.

3.05 No Conflicts. The execution and delivery by NYSE of this Agreement does not, and the execution and delivery by NYSE of the Operative Documents, the performance by NYSE of its obligations under this Agreement and such Operative Documents, and the consummation of the transactions contemplated hereby and thereby will not:

(a) conflict with or result in a violation or breach of any of the terms, conditions or provisions of the certificate of incorporation or rules or by-laws of NYSE; or

(b) subject to obtaining the consents and approvals, taking the actions, making the filings and giving the notices set forth in Schedule 3.05(b), conflict with or result in a violation or breach of any term or provision of any Law or Order applicable to NYSE (other than such conflicts, violations or breaches which could not, in the aggregate, reasonably be expected to adversely

affect the validity or enforceability of this Agreement or any of the Operative Documents).

(c) except as could not, individually or in the aggregate, reasonably be expected to adversely affect the ability of NYSE to consummate the transactions contemplated hereby or by any of the Operative Documents or to perform its obligations hereunder or thereunder, (1) conflict with or result in a violation or breach of, (2) constitute (with or without notice or lapse of time or both) a default under, (3) require NYSE to obtain any consent, approval or action of, make any filing with or give any notice to any Person as a result or under the terms of, or (4) result in the creation or imposition of any lien upon NYSE or any of its Assets and Properties under, any Contract or License to which NYSE is a party or by which any of its Assets and Properties is bound.

3.06 Governmental Approvals and Filings. Except as set forth in Schedule 3.06, no consent, approval or action of, filing with or notice to any Governmental or Regulatory Authority on the part of NYSE is required in connection with the execution, delivery and performance of this Agreement or any of the Operative Documents or the consummation of the transactions contemplated hereby or thereby, except (1) where notice of the obligation to make a filing with or obtain the consent of the Commission is first received by NYSE from the Commission subsequent to the Execution Date, (2) where the failure to obtain any such consent, approval or action, to make any such filing or to give any such notice could not reasonably be expected to adversely affect the ability of NYSE to consummate the transactions contemplated by this Agreement or any of the Operative Documents or to perform its obligations hereunder or thereunder, and (3) those as would be required solely as a result of the identity or the legal or regulatory status of CBOE or any of its Affiliates or any changes made in the business, operations, rules, practices or procedures of the Options Business after the Closing.

3.07 Legal Proceedings. Except as set forth in Schedule 3.07, there are no Actions or Proceedings pending or, to the Knowledge of NYSE, threatened against, relating to or affecting NYSE which could reasonably be expected to result in the issuance of an Order restraining, enjoining or otherwise prohibiting or making illegal the consummation of any material part of the transactions contemplated by this Agreement or any of the Operative Documents or materially adversely affecting the Options Business taken as a whole.

3.08 Brokers. All negotiations relative to this Agreement and the transactions contemplated hereby have been

carried out by NYSE directly with CBOE without the intervention of any Person on behalf of NYSE in such manner as to give rise to any valid claim by any Person against CBOE for a finder's fee, brokerage commission or similar payment.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF CBOE

CBOE hereby represents and warrants to NYSE as follows:

4.01 Corporate Existence of CBOE. CBOE is a corporation, duly incorporated, validly existing and in good standing under the Laws of the State of Delaware. CBOE has full corporate power to execute and deliver this Agreement and the Operative Documents, perform its obligations hereunder and thereunder and consummate the transactions contemplated hereby and thereby.

4.02 SRO Status. CBOE is an SRO registered as a national securities exchange under the Act and has in effect rules in accordance with the provisions of the Act for the trading of Options which may be issued by the OCC in accordance with its by-laws. Such rules (including the Constitution and Rules of CBOE, stated policies and interpretations thereof, and any amendments thereto, inclusive of amendments required to be filed pursuant to this Agreement, upon approval thereof by the Commission), as the same may be amended from time to time in accordance with applicable rules and regulations of the Commission, are herein referred to as the "CBOE Rules".

4.03 Confidentiality Agreement. The Confidentiality Agreement is in full force and effect and CBOE has committed no material breach thereof.

4.04 Authority. The execution and delivery by CBOE of this Agreement and the Operative Documents, and the performance by CBOE of its obligations hereunder and thereunder, have been duly and validly authorized by the Board of Directors and members of CBOE, no other corporate action on the part CBOE being necessary, except for approval by the CBOE Board of Directors of the amendments to CBOE Rules necessary for consummation of the transactions contemplated by this Agreement. This Agreement has been duly and validly executed and delivered by CBOE and constitutes, and upon the execution and delivery by CBOE of the Operative Documents, such Operative Documents shall constitute, legal, valid and binding obligations of CBOE enforceable against CBOE in accordance with their respective terms.

4.05 No Conflicts. The execution and delivery by CBOE of this Agreement does not, and the execution and delivery by CBOE of the Operative Documents , the performance by CBOE of its obligations under this Agreement and such Operative Documents and the consummation of the transactions contemplated hereby and thereby will not:

(a) conflict with or result in a violation or breach of any of the terms, conditions or provisions of the certificate of incorporation or rules or by-laws of CBOE;

(b) subject to obtaining the consents and approvals, taking the actions, making the filings and giving the notices set forth in Schedule 4.05(b), conflict with or result in a violation or breach of any term or provision of any Law or Order applicable to CBOE or any of its Assets and Properties (other than such conflicts, violations or breaches which could not, in the aggregate, reasonably be expected to adversely affect the validity or enforceability of this Agreement or any of the Operative Documents); or

(c) except as could not, individually or in the aggregate, reasonably be expected to adversely affect the ability of CBOE to consummate the transactions contemplated hereby or by any of the Operative Documents or to perform its obligations hereunder or thereunder, (1) conflict with or result in a violation or breach of, (2) constitute (with or without notice or lapse of time or both) a default under, (3) require CBOE to obtain any consent, approval or action of, make any filing with or give any notice to any Person as a result or under the terms of, or (4) result in the creation or imposition of any lien upon CBOE or any of its Assets and Properties under, any Contract or License to which CBOE is a party or by which any of its Assets and Properties is bound.

4.06 Governmental Approvals and Filings. Except as set forth in Schedule 4.06, no consent, approval or action of, filing with or notice to any Governmental or Regulatory Authority on the part of CBOE is required in connection with the execution, delivery and performance of this Agreement or any of the Operative Documents or the consummation of the transactions contemplated hereby or thereby, except (1) where notice of the obligation to make a filing with or obtain the consent of the Commission is first received by CBOE from the Commission subsequent to the Execution Date, and (2) where the failure to obtain any such consent, approval or action, to make any such filing or to give any such notice could not reasonably be expected to adversely affect the ability of CBOE to consummate the transactions contemplated by this Agreement or any of the

Operative Documents or to perform its obligations hereunder or thereunder.

4.07 Legal Proceedings. Except as set forth in Schedule 4.07, there are no Actions or Proceedings pending or, to the Knowledge of CBOE, threatened against, relating to or affecting CBOE or any of its Assets and Properties which could reasonably be expected to result in the issuance of an Order restraining, enjoining or otherwise prohibiting or making illegal the consummation of any material part of the transactions contemplated by this Agreement or any of the Operative Documents or materially adversely affecting CBOE's business operations.

4.08 Brokers. All negotiations relative to this Agreement and the transactions contemplated hereby have been carried out by CBOE directly with NYSE without the intervention of any Person on behalf of CBOE in such manner as to give rise to any valid claim by any Person against NYSE for a finder's fee, brokerage commission or similar payment.

4.09 Financing. CBOE has sufficient cash and/or available credit facilities to pay the Purchase Price and make all other necessary payments of fees, expenses and payments in connection with the transactions contemplated by this Agreement and the Operative Documents.

ARTICLE V

FURTHER COVENANTS OF NYSE

NYSE covenants and agrees with CBOE that, at all times from and after the date hereof until the Effective Date, NYSE shall comply with all covenants and provisions applicable to it under Articles I and II, this Article V and as are otherwise applicable to it hereunder, except to the extent that CBOE may otherwise consent in writing.

5.01 Regulatory and Other Approvals. NYSE shall, (a) take all reasonable steps necessary or desirable, and proceed diligently and in good faith and use all reasonable efforts, as promptly as practicable to obtain all consents, approvals, exemptions, waivers or actions of, to make all filings with and to give all notices to Governmental or Regulatory Authorities or any other Person required of NYSE to consummate the transactions contemplated hereby and by the Operative Documents, (b) provide such other information and communications to such Governmental or Regulatory Authorities or other Persons as such Governmental or Regulatory Authorities or other Persons may reasonably request in connection therewith and (c) provide reasonable cooperation to

CBOE in obtaining all consents, approvals or actions of, making all filings with and giving all notices to Governmental or Regulatory Authorities or other Persons required of CBOE to consummate the transactions contemplated hereby and by the Operative Documents. NYSE shall provide prompt notification to CBOE when any such consent, approval, action, filing or notice referred to in clause (a) above is obtained, taken made or given, as applicable.

5.02 Conduct of Business. Until the close of trading on the Business Day immediately preceding the Effective Date, (a) except as set forth in Schedule 5.02 or as required or permitted by this Agreement, or as required by any Law or Order or direction of the Commission and subject to the occurrence of any event beyond the reasonable control of NYSE, NYSE shall conduct the Options Business only in the ordinary course of NYSE's business and shall continue to provide facilities for conduct of the Options Business and (b) NYSE shall comply in all material respects with all Laws and Orders applicable to the operation of its Options Business to the extent NYSE is obligated to comply therewith.

5.03 Certain Transactions. At the close of trading on the Business Day immediately preceding the Effective Date, NYSE shall close its options trading floor for purposes of executing transactions in Options and shall cease providing facilities for the operation of the Options Business except (1) as necessary for clearing, settlement, regulatory or other purposes relating to events occurring on or prior to the Effective Date or relating generally to the winding-down of the Options Business or any activities of or through NYSE in connection therewith, or (2) as required by the Act or other applicable Law, rule, regulation or Order or by direction of the Commission. Subject to any payment which may be required under Section 5.04, nothing in this Section 5.03 or elsewhere in this Agreement affects in any way NYSE's right, which it hereby retains, hereafter to re-open its Options trading floor for purposes of executing transactions in Options, or hereafter to engage in transactions in Options, engage in or provide facilities for operation of the Options Business, or to engage in any other business activity.

5.04 Certain Options Operations. Except as otherwise provided under Section 5.03 or this Section 5.04 and except for termination of this Agreement pursuant to Article XI, if at any time during the period of 1 year immediately following the Effective Date, NYSE shall operate a trading facility for the purpose of effecting trades in Options, then it shall pay CBOE the sum of $500,000; provided, however, that only one payment may arise under this Section 5.04(a); and provided, further, that ownership, management or participation by NYSE in or of OCC,

OPRA, OIC, ISG or any similar organization or group or NYSE's acting as a designated options examining authority shall not give rise to any payment under this Section 5.04.

Commencement of operation of such a facility during the aforesaid period by NYSE shall not constitute a breach of or be limited by this Agreement, and the only right which CBOE may have with respect thereto shall be the right to receive payment in accordance with this Section 5.04.

5.05 Fulfillment of Conditions. NYSE shall execute and deliver at the Closing each Operative Document, and shall take all reasonable steps necessary or desirable and proceed diligently and in good faith to satisfy each other condition to the obligations of CBOE contained in this Agreement. NYSE shall not take (to the extent it is lawfully permitted not to take) or fail to take (to the extent it is lawfully permitted and reasonably able to take) any action that could reasonably be expected to result in the nonfulfillment of any such condition.

ARTICLE VI

FURTHER COVENANTS OF CBOE

CBOE covenants and agrees with NYSE that, at all times from and after the date hereof until the Effective Date, CBOE shall comply with all covenants and provisions applicable to it under Articles I and II, this Article VI and as are otherwise applicable to it hereunder, except to the extent that NYSE may otherwise consent in writing.

6.01 Regulatory and Other Approvals. CBOE shall (a) take all reasonable steps necessary or desirable, and proceed diligently and in good faith and use all reasonable efforts, as promptly as practicable to obtain all consents, approvals, exemptions, waivers, or actions of, to make all filings with and to give all notices to Governmental or Regulatory Authorities or any other Person required of CBOE to consummate the transactions contemplated hereby and by the Operative Documents, (b) provide such other information and communications to such Governmental or Regulatory Authorities or other Persons as such Governmental or Regulatory Authorities or other Persons may reasonably request in connection therewith and (c) provide reasonable cooperation to NYSE in obtaining all consents, approvals or actions of, making all filings with and giving all notices to Governmental or Regulatory Authorities or other Persons required of NYSE to

consummate the transactions contemplated hereby and by the Operative Documents. CBOE shall provide prompt notification to NYSE when any such consent, approval, action, filing or notice referred to in clause (a) above is obtained, taken, made or given, as applicable.

6.02 Conduct of Business. Until the Effective Date, (a) except as set forth in Schedule 6.02 or as required or permitted by this Agreement, or as required by any Law or Order or direction of the Commission and subject to the occurrence of any event beyond the reasonable control of CBOE, CBOE shall conduct its business operations only in the ordinary course and (b) CBOE shall comply in all material respects with all Laws and Orders applicable to the operation of its business to the extent CBOE is obligated to comply therewith.

6.03 Use of Name. Except as otherwise may be provided in the License Agreement, from and after the Execution Date, neither CBOE nor any Subsidiary of CBOE nor any of their respective Affiliates shall use (1) the name of NYSE or any Subsidiary or Affiliate of NYSE or any confusingly similar name or (2) any trademarks or trademark rights, trade names or trade name rights, service marks or service mark rights, service names or service name rights, copyrights or copyright rights, brand names, trade dress, business or product names, logos, slogans or other proprietary rights of NYSE.

6.04 Fulfillment of Conditions. CBOE shall execute and deliver at the Closing each Operative Document, and shall take all reasonable steps necessary or desirable and proceed diligently and in good faith to satisfy each other condition to the obligations of NYSE contained in this Agreement. CBOE shall not take (to the extent it is lawfully permitted not to take) or fail to take (to the extent it is lawfully permitted and reasonably able to take) any action that could reasonably be expected to result in the nonfulfillment of any such condition.

ARTICLE VII

CONDITIONS TO OBLIGATIONS OF NYSE

The obligation of NYSE to fulfill its obligations hereunder from and after the Effective Date are subject to the fulfillment, at or before the Closing, of each of the following conditions (all or any of which may be waived in whole or in part by NYSE in its sole discretion):

7.01 Representations and Warranties. The representations and warranties made by CBOE in this Agreement shall be true and correct in all material respects on and as of the Effective Date as though made on and as of the Effective Date or, in the case of representations and warranties made as of a specified date earlier than the Effective Date, on and as of such earlier date.

7.02 Performance. CBOE shall have performed and complied with, in all material respects, the agreements, covenants and obligations required by this Agreement to be so performed or complied with by CBOE at or before the Effective Date.

7.03 Operative Documents. CBOE shall have delivered to NYSE (a) the License Agreement , dated as of the Effective Date and executed by a duly authorized officer of CBOE, substantially in the form and to the effect of Exhibit A, and (b) the Escrow Agreement (and payments thereunder), dated as of the Effective Date and executed by a duly authorized officer of CBOE, substantially in the form and to the effect of Exhibit B. The Confidentiality Agreement shall be in full force and effect with no notice of termination given thereunder by CBOE.

7.04 Orders and Laws. There shall not be in effect on the Effective Date any Order or Law restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by this Agreement or any of the Operative Documents or materially adversely affecting operation by CBOE of any material part of its business operations (except to the extent any such Order or Law may materially adversely affect operations of options markets generally).

7.05 Regulatory Consents and Approvals. All consents, approvals and actions of, filings with and notices to any Governmental or Regulatory Authority necessary to permit NYSE and CBOE to perform their obligations under this Agreement and the Operative Documents and to consummate the transactions contemplated hereby and thereby shall have been duly obtained, made or given and shall be in full force and effect, and all terminations or expirations of waiting periods imposed by any Governmental or Regulatory Authority necessary for the consummation of the transactions contemplated by this Agreement and the Operative Documents shall have occurred.

7.06 Approval by CBOE Board. The CBOE Board of Directors shall have approved all amendments to CBOE Rules necessary for consummation of the transactions contemplated by this Agreement.

ARTICLE VIII

CONDITIONS TO OBLIGATIONS OF CBOE

The obligation of CBOE to fulfill its obligations hereunder from and after the Effective Date are subject to the fulfillment, at or before the Closing, of each of the following conditions (any of which may be waived in whole or in part by CBOE in its sole discretion):

8.01 Representations and Warranties. The representations and warranties made by NYSE in this Agreement shall be true and correct in all material respects on and as of the Effective Date as though made on and as of the Effective Date or, in the case of representations and warranties made as of a specified date earlier than the Effective Date, on and as of such earlier date.

8.02 Performance. NYSE shall have performed and complied with, in all material respects, the agreements, covenants and obligations required by this Agreement to be so performed or complied with by NYSE at or before the Effective Date.

8.03 Operative Documents. NYSE shall have delivered to CBOE (a) the License Agreement, dated as of the Effective Date and executed by a duly authorized officer of NYSE, substantially in the form and to the effect of Exhibit A and (b) the Escrow Agreement, dated as of the Effective Date and executed by a duly authorized officer of NYSE, substantially in the form and to the effect of Exhibit B. The Confidentiality Agreement shall be in full force and effect with no notice of termination given thereunder by NYSE.

8.04 Orders and Laws. There shall not be in effect on the Effective Date any Order or Law restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by this Agreement or any of the Operative Documents or materially adversely affecting the Options Business taken as a whole (except to the extent any such Order or Law may materially adversely affect operations of options markets generally).

8.05 Regulatory Consents and Approvals. All consents, approvals and actions of, filings with and notices to any Governmental or Regulatory Authority necessary to permit CBOE and NYSE to perform their obligations under this Agreement and the Operative Documents and to consummate the transactions contemplated hereby and thereby shall have been duly obtained,

made or given and shall be in full force and effect, and all terminations or expirations of waiting periods imposed by any Governmental or Regulatory Authority necessary for the consummation of the transactions contemplated by this Agreement and the Operative Documents shall have occurred.

ARTICLE IX

TAX MATTERS

CBOE shall be responsible for any Tax imposed on CBOE with respect to business, assets or operations of CBOE owned or conducted by it subsequent to the Closing, including but not limited to all or any part of the Options Business to be transferred hereunder. NYSE shall be responsible for any Tax imposed on NYSE with respect to business, assets or operations of NYSE owned or conducted by it prior to the Closing, including but not limited to all or any part of the Options Business to be transferred hereunder. Neither party shall have any obligation to the other for any other Tax.

ARTICLE X

SURVIVAL; NO OTHER REPRESENTATIONS

10.01 Survival of Representations, Warranties, Covenants and Agreements. The representations, warranties, covenants and agreements of NYSE and CBOE contained in this Agreement shall survive the Closing until the later of (1) any period herein specified for their respective survival or (2) the expiration of all applicable statutes of limitation (including all periods of extension, whether automatic or permissive) except that any representation, warranty, covenant or agreement that would otherwise terminate in accordance with the above shall continue to survive, if a claim shall have been timely made in good faith based on facts reasonably expected to establish a valid claim for breach of this Agreement on or prior to such termination date, until the related claim has been satisfied or otherwise resolved.

10.02 No Other Representations. Notwithstanding anything to the contrary contained in this Agreement, it is the explicit intent of each party hereto that (1) NYSE is making no representations or warranties whatsoever, express or implied, except those representations and warranties contained in Article III, any such other representations or warranties being hereby expressly disclaimed, including but not limited to no

representation or warranty to the effect that it can require or direct any Firm, member, OTR Holder or other Person, or the business operations of any of them, to transfer or be transferred to CBOE, and (2) CBOE is making no representations or warranties whatsoever, express or implied, except those representations and warranties contained in Article IV, any such other representations or warranties being hereby expressly disclaimed.

ARTICLE XI

TERMINATION

11.01 Termination. This Agreement may be terminated, and the transactions contemplated herein may be abandoned:

(a) at any time before the Closing, by mutual written agreement of NYSE and CBOE; and

(b) at any time before the Closing, by either party in the event of a material breach of any representation, warranty, covenant or agreement of the other party contained in this Agreement, providing that the party alleging breach gives written notice thereof to the other party and the other party fails to cure such breach within a reasonable time, not to exceed 30 days, after its receipt of such notice.

11.02 Effect of Termination. If this Agreement is validly terminated pursuant to Section 11.01, this Agreement shall forthwith become null and void, and there shall be no liability or obligation on the part of NYSE or CBOE or their Affiliates or their respective officers, directors, employees and agents, except as otherwise provided in this Section 11.02 and except that the provisions with respect to expenses in Section 13.03 and confidentiality in Section 13.04 shall continue to apply following any such termination and any other provisions herein specified to survive termination shall survive termination as so specified. Notwithstanding any other provision in this Agreement to the contrary, upon termination of this Agreement pursuant to Section 11.01, NYSE shall remain liable to CBOE for any material breach of Section 5.05 (Fulfillment of Conditions) of this Agreement by NYSE existing at the time of such termination, and CBOE shall remain liable to NYSE for any material breach of Section 6.04 (Fulfillment of Conditions) of this Agreement by CBOE existing at the time of such termination, and each of NYSE or CBOE may seek such remedies, including damages and reasonable fees of attorneys, against the other with respect to any such breach as are provided in this Agreement or as are otherwise available at law or in equity.

ARTICLE XII

DEFINITIONS; CONSTRUCTION

12.01 Definitions. As used in this Agreement, the following defined terms have the meanings indicated below:

"Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder.

"Actions or Proceedings" means any action, suit, proceeding, arbitration or Governmental or Regulatory Authority proceeding or investigation.

"Affiliate" means any Person that directly, or indirectly through one of more intermediaries, controls or is controlled by or is under common control with the Person specified. For purposes of this definition, control of a Person means the power, direct or indirect, to direct or cause the direction of the management and policies of such Person whether by Contract or otherwise.

"Agreement" means this NYSE Options Business Transfer Agreement, the Exhibits (other than Operative Documents), the Schedules and any certificates delivered in accordance herewith, as the same shall be amended from time to time.

"Assets and Properties" of any Person means all assets and properties of any kind, nature, character and description (whether real, personal or mixed, whether tangible or intangible and wherever situated) owned or leased by such Person.

"Badges" has the meaning ascribed to it in Section 2.04(a).

"Business or Condition" of a Person means the business, financial condition, and results of operations of the Person and its Subsidiaries, taken as a whole.

"Business Day" means a day other than Saturday, Sunday or any day on which banks or exchanges located in the State of New York are authorized or obligated to close.

"CBOE Rules" has the meaning ascribed to it in Section 4.02.

"Clearing Agency" has the meaning ascribed to it under Section 3(a)(23)(A) of the Act.

"Closing" means the closing of the transactions as contemplated by Section 1.01

"Commission" means the United States Securities and Exchange Commission.

"Confidentiality Agreement" means the confidentiality agreement between NYSE and CBOE dated as of September 9, 1996.

"Contract" means any written agreement, lease, approval, permit, license (foreign or domestic), evidence of indebtedness, mortgage, indenture, security agreement or other contract.

"Cut Off Date" has the meaning ascribed to it in Section 2.04(a).

"DPM" has the meaning ascribed to it under CBOE Rules.

"Effective Date" has the meaning ascribed to it in Section 2.01(c).

"Escrow Agreement" means the agreement among NYSE, CBOE and The Chase Manhattan Bank, N.A. substantially in the form of Exhibit B.

"Execution Date" means the date as of which this Agreement is executed by NYSE and CBOE as set forth in the first paragraph hereof.

"Firm" has the meaning ascribed to it in Section 2.04(a).

"Floor Broker" means a floor broker, board broker or any other class or type of broker as defined under or permitted by CBOE Rules.

"Floor Committee" has the meaning ascribed to it in Section 2.03(a).

"GAAP" means generally accepted accounting principles, consistently applied throughout the specified period and in the immediately prior comparable period.

"Governmental or Regulatory Authority" means any court, tribunal, arbitrator, authority, agency, commission, official or other instrumentality of the United States or any state, county, city or other political subdivision.

"Holder," as the term relates to Permits, has the meaning ascribed to it Section 2.02(b).

"ISG" means the Intermarket Surveillance Group.

"Knowledge of CBOE" means the actual knowledge of any senior officer or managerial employee of CBOE.

"Knowledge of NYSE" means the actual knowledge of any senior officer or managerial employee of NYSE.

"Law" means all laws, statutes, rules, regulations, ordinances and other pronouncements having the effect of law of the United States or any state, county, city or other political subdivision or of any Governmental or Regulatory Authority.

"Lease Pool Recipient" has the meaning ascribed to it in Section 2.07.

"License Agreement" means the 10-year prepaid license agreement between NYSE and CBOE with respect to the use by CBOE of the NYSE Composite Index and related trademark in connection with the trading of certain index Options, substantially in the form of Exhibit A.

"Licenses" means all licenses, permits, certificates of authority, authorizations, approvals, registrations, franchises and similar consents granted or issued by any Governmental or Regulatory Authority.

"Loss" means any and all damages, fines, penalties, deficiencies, losses and expenses (including without limitation interest, court costs, reasonable fees of attorneys, accountants and other experts or other reasonable expenses of litigation or other proceedings or of any claim, default or assessment).

"Market Maker" means a market-maker, dealer, dealer-specialist, DPM or any other class or type of dealer defined under or permitted by CBOE Rules.

"NYSE/CBOE Options Floor" has the meaning ascribed to it in Section 2.03(a).

"NYSE Options" means those equity and index options that are listed for trading on NYSE on the last NYSE trading day preceding the Effective Date and are not then also listed for trading on CBOE, together with any equity and index options that subsequently are allocated to be traded on the NYSE/CBOE Options Floor in accordance with Section 2.06 or otherwise.

"NYSE Rules" has the meaning ascribed to it in Section 3.02.

"Non-Specialist Firms" has the meaning ascribed to it in Section 2.04(a).

"OCC" means The Options Clearing Corporation or any successor.

"OIC" means the Options Industry Council or any successor.

"Operative Documents" means the License Agreement and the Escrow Agreement.

"OPRA" means the Options Price Reporting Authority or any successor.

"Options" means any put or call option security (equity, index or other) issued by the OCC in accordance with its By-Laws and rules as in effect from time to time.

"Order" means any writ, judgment, decree, injunction or similar order of any Governmental or Regulatory Authority (in each such case whether preliminary or final).

"OTR" means any options trading rights as contemplated by Article II, Section 8 of the NYSE Constitution.

"OTR Owner" means a Person who owns one or more OTRs whether or not such OTRs are (1) part of or stripped from an NYSE equity membership or (2) leased to a third party; the term does not include lessees of OTRs.

"Owner", as the term relates to Permits, has the meaning ascribed to it in Section 2.02(d).

"Permit" has the meaning ascribed to it in Section 2.01(a).

"Permit Lease Pool" has the meaning ascribed to it in Section 2.07.

"Person" means any natural person, corporation, general partnership, limited partnership, proprietorship, other business organization, trust, union, association or Governmental or Regulatory Authority.

"Principal CBOE Trading Facility" means the principal floor facility for the trading of Options through CBOE (exclusive

of NYSE Options) as diagrammed on Schedule 2.03(a), or such other principal floor facility hereafter established for such purpose pursuant to CBOE Rules.

"Purchase Price" has the meaning ascribed to it in Section 1.02.

"Required Nominee" has the meaning ascribed to it in Section 2.04(d).

"Self-Regulatory Organization" has the meaning ascribed to it under Section 3(a)(26) of the Act.

"Specialist Firms" has the meaning ascribed to it in Section 2.04(a).

"SRO" means Self-Regulatory Organization.

"Subsidiary" means any Person in which another Person, directly or indirectly through Subsidiaries or otherwise, beneficially owns more than fifty percent (50%) of either the equity interests in, or the voting control of, such Person.

"Tax" means all federal, state, county, local, foreign and other taxes, including, without limitation, income taxes, estimated taxes, utility taxes, sales taxes, use taxes, unincorporated business taxes, franchise taxes, and employment and payroll related taxes.

"Tax Returns" means all returns required by applicable law to be filed with respect to Taxes.

"Trading by Order" refers to any Options trade (1) effected as agent through any CBOE facilities (other than on the NYSE/CBOE Options Floor) by a regular CBOE member or nominee thereof for the market making account of a Permit Holder or nominee thereof, and (2) for which CBOE Rules, for all purposes (including but not limited to margin computations), recognize the Permit Holder or Holder nominee for whose market making account the trade was made as having acted as a principal with respect thereto.

12.02 Construction of Certain Terms and Phrases. Unless the context of this Agreement otherwise requires, (1) words of any gender include each other gender; (2) words, including but not limited to defined terms, using the singular or plural number also include the plural or singular number, respectively; (3) the terms "hereof," "herein," "hereby" and

derivative or similar words refer to this entire Agreement; (4) the terms "Article" or "Section" refer to the specified Article or Section of this Agreement; and (5) references to "the date hereof" refer to the date set forth in the forepart of this Agreement. Whenever this Agreement refers to a number of days, such number shall refer to calendar days unless Business Days are specified. All accounting terms used herein and not expressly defined herein shall have the meanings given to them under GAAP. Any representation or warranty contained herein as to the enforceability of a Contract shall be subject to the effect of any bankruptcy, insolvency, reorganization, moratorium or other similar law affecting the enforcement of creditors' rights generally and to general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at Law).

ARTICLE XIII

MISCELLANEOUS

13.01 Notices. All notices, requests and other communications hereunder must be in writing and shall be deemed to have been duly given only if delivered personally or by facsimile transmission or mailed (first class postage prepaid) to the parties at the following addresses or facsimile numbers:

If to CBOE, to:

Chicago Board Options Exchange
400 South LaSalle Street
Chicago, Illinois 60605
Attn: Charles Henry,
President and Chief Operating Officer
Facsimile No.: (312) 786-7407

with a copy to:

Michael L. Meyer
Schiff Hardin & Waite
7200 Sears Tower
Chicago, Illinois 60606
Facsimile No.: (312) 258-5600

If to NYSE, to:

New York Stock Exchange, Inc.
11 Wall Street
New York, New York 10005
Attn: William R. Johnston,
President and Chief Operating Officer
Facsimile No.: (212) 656-2046

with a copy to:

New York Stock Exchange, Inc.
11 Wall Street
New York, New York 10005
Attn: Richard P. Bernard, Esq.
Executive Vice President
and General Counsel
Facsimile No.: (212) 656-2267

All such notices, requests and other communications shall (1) if delivered personally to the address as provided in this Section 13.01, be deemed given upon delivery, (2) if delivered by facsimile transmission to the facsimile number as provided in this Section 13.01, be deemed given upon receipt, and (3) if delivered by mail in the manner described above to the address as provided in this Section 13.01, be deemed given upon receipt (in each case regardless of whether such notice, request or other communication is received by any other Person to whom a copy of such notice, request or other communication is to be delivered pursuant to this Section 13.01). Any party from time to time may change its address, facsimile number or other information for the purpose of notices, requests and other communications to that party by giving notice specifying such change to the other party hereto.

13.02 Entire Agreement. This Agreement and the Operative Documents and the Confidentiality Agreement supersede any and all prior discussions, representations, warranties and agreements between the parties with respect to the subject matter hereof and thereof, including but not limited to any letters of intent between the parties with respect hereto or thereto, and contain the sole and entire agreement between the parties hereto with respect to the subject matter hereof and thereof.

13.03 Expenses. Except as otherwise expressly provided in this Agreement (including, but not limited to, as provided in Section 11.02), whether or not the transactions contemplated hereby are consummated, each party shall pay its own costs and expenses incurred in connection with the negotiation,

execution and closing of this Agreement and the Operative Documents and the transactions contemplated hereby and thereby.

13.04 Confidentiality. The terms and conditions of the Confidentiality Agreement are hereby incorporated herein and made a part hereof and the Confidentiality Agreement shall remain in full force and effect in accordance with its terms. Except as otherwise provided herein or in the Confidentiality Agreement, this Agreement and all drafts hereof and negotiations in connection herewith shall be deemed confidential as and to the extent contemplated by the Confidentiality Agreement for purposes of the Confidentiality Agreement and this Agreement. Without the consent of the other party, either party may issue factually accurate press releases or other public notices (collectively "Public Notices") containing information disclosure of which may otherwise be prohibited by the Confidentiality Agreement, providing such information relates only to information set forth in this Agreement or to the fact of the execution of, and the issuing party's specific purposes for, this Agreement, or to the fact of the consummation of the transactions contemplated hereby. Issuance by a party of any Public Notices containing any other information disclosure of which is prohibited in the Confidentiality Agreement may be made only in conformity with the provisions of the Confidentiality Agreement applicable thereto.

In connection with the consummation of the transactions contemplated by this Agreement (including fulfillment of the parties' respective conditions under Sections 7.05 and 8.05 hereof), NYSE and CBOE agree that each of them, respectively, may file (which for purposes hereof means filing pursuant to Section 19(b) of the Act) with or submit or furnish to the Commission copies of this Agreement at such time and in such manner as the party determines, and shall file, submit or furnish any schedules hereto or any of the Operative Documents if required by applicable law or requested by the Commission; provided, however, that at the time either party files, submits or furnishes copies, as executed, or drafts of such schedules or any of the Operative Documents with or to the Commission, it shall request confidential treatment thereof under the United States Freedom of Information Act and all other applicable laws, rules and regulations. Filing, submitting or furnishing of copies of this Agreement or its schedules or of the Operative Documents with or to the Commission pursuant to and in accordance with this paragraph shall not be deemed in violation of this Agreement or the Confidentiality Agreement.

13.05 Further Assurances; Post-Closing Cooperation.

(a) Subject to the terms and conditions of this Agreement, at any time or from time to time after the Closing,

each of the parties hereto shall execute and deliver such other documents and instruments, provide such materials and information and take such other actions as may reasonably be necessary, proper or advisable, to the extent permitted by Law, to fulfill its obligations under this Agreement and the Operative Documents. If a draft of any Operative Document is not attached to this Agreement as an Exhibit at the Execution Date, the parties agree to negotiate promptly, and in good faith, toward completion, no later than two weeks after the Execution Date, of a draft of such Operative Document, substantially in the form mutually acceptable for execution and delivery at the Closing, and upon completion of such draft, as evidenced by the written acknowledgment of the parties, it shall be deemed to be such Exhibit.

(b) If, in order properly to prepare its income Tax Returns or other documents or reports required to be filed with Governmental or Regulatory Authorities, it is necessary that a party be furnished with additional information, documents or records relating to the Business or Condition of the other party, and such information, documents or records are in the possession or control of the other party, such other party agrees to use reasonable efforts to furnish or make available such information, documents or records (or copies thereof) at the recipient's request, cost and expense, provided, however, that the party providing such information may redact any information it desires from such disclosure and may refuse to provide any documents constituting trade secrets or subject to attorney-client privilege or other privilege. Any information obtained by a party in accordance with this paragraph shall be deemed confidential in accordance with Section 13.04.

(c) Notwithstanding anything to the contrary contained in Section 13.05(a) or (b), if either party reasonably deems itself to be in an adversarial relationship in litigation or arbitration with the other party or any of its Affiliates, Section 13.05(a) or (b) shall be ineffective and the furnishing of information, documents or records shall be subject to applicable rules relating to discovery.

13.06 Waiver. Any term or condition of this Agreement may be waived at any time by the party that is entitled to the benefit thereof, but no such waiver shall be effective unless made pursuant to Articles 7 or 8 or set forth in a written instrument duly executed by or on behalf of the party waiving such term or condition. No waiver by any party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion. All remedies, either under this Agreement or by equity, Law or otherwise afforded, shall be cumulative and not alternative.

13.07 Amendment. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by or on behalf of each party hereto.

13.08 Arbitration. Except as may otherwise be provided herein, any conflict or dispute arising out of or in connection with this Agreement and involving the parties hereto shall, if not resolved within a reasonable time after notice thereof by one party to the other, be submitted to binding arbitration in the City of New York, State of New York, if NYSE is the defendant therein, and in the City of Chicago, State of Illinois, if CBOE is the defendant therein, in any case pursuant to the Commercial Arbitration Rules of the American Arbitration Association then in effect and any arbitration award thereon may be submitted to and enforced by any court of competent jurisdiction. This Section 13.08 shall survive the termination of this Agreement with respect to all other terms of this Agreement which survive termination hereof.

13.09 Equitable Remedies. Each party hereby agrees and consents to the granting by any court of competent jurisdiction of an injunction or other equitable relief, without the necessity of actual monetary loss being proved, in order that a breach or threatened breach of this Agreement may be effectively restrained, with any such relief to be in addition to any damages or other remedy at law or equity available to a party as a result of such breach.

13.10 No Assignment; Binding Effect. Except as otherwise specified herein, neither this Agreement nor any right, interest or obligation hereunder may be assigned by any party hereto, without the prior written consent of the other party hereto, and any attempt to do so shall be void. This Agreement is binding upon, inures to the benefit of and is enforceable by the parties hereto and their respective successors and permitted assigns.

13.11 Headings. The headings used in this Agreement have been inserted for convenience of reference only and do not define or limit the provisions hereof.

13.12 Invalid Provisions; Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future Law, or pursuant to a determination by the Commission or any other Governmental or Regulatory Authority, or if a consent or authorization of the Commission or any other Governmental or Regulatory Authority to execution of this Agreement or consummation of the transactions contemplated hereby is conditioned upon deletion or modification

of any provision of this Agreement, and if the rights or obligations of any party hereto under this Agreement will not be materially and adversely affected thereby (without limiting the generality of the foregoing, any prohibition on receipt by NYSE of any payments from CBOE hereunder shall be deemed to materially and adversely affect NYSE), (a) such provision shall be fully severable and fully subject to such modification, (b) this Agreement shall be construed and enforced as if such an illegal, invalid or unenforceable provision, or provision for which modification was requested, had never comprised a part hereof, (c) the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision, or provision for which modification was requested, or by its severance herefrom or modification hereunder, and (d) in lieu of such illegal, invalid or unenforceable provision, or provision for which modification is requested, there shall be added automatically as a part of this Agreement (1) a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible or (2) the modification requested, as the case may be.

13.13 Changes to Schedules. To the extent this Agreement provides that any Schedule hereto is to contain information as of a date or dates, or with respect to events occurring, subsequent to the date hereof, the party which provided the information contained in that Schedule at the date hereof shall, as soon hereafter as is practicable but no later than the date as of which that Schedule is to speak, provide to the other party the information necessary to cause the Schedule to reflect the information called for herein at the requisite date, whereupon the Schedule shall be deemed amended accordingly.

13.14 Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the Laws of the State of New York applicable to a Contract executed and performed in such State, without giving effect to the conflicts of laws principles thereof. The parties acknowledge that they, respectively, are subject to Federal Law to the extent contemplated in the Act.

13.15 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by a duly authorized officer of each party hereto as of the date first above written.

CHICAGO BOARD OPTIONS
EXCHANGE, INCORPORATED

By: /s/ Alger B. Chapman
Name: Alger B. Chapman
Title: Chairman and
Chief Executive Officer

NEW YORK STOCK EXCHANGE, INC.

By: /s/ Richard A. Grasso
Name: Richard A. Grasso
Title: Chairman and
Chief Executive Officer

11 Wall Street
New York, NY 10005
Tel 212 656 5150
Fax 212 656 2880

Richard A. Grasso
Chairman and
Chief Executive Officer

NYSE
New York
Stock Exchange, Inc.

December 9, 1996

TO: OPTIONS MEMBERS AND MEMBER ORGANIZATIONS

SUBJECT: Transfer of Options Business

The Exchange and the Chicago Board Options Exchange ("CBOE") have signed a letter of intent to transfer the Exchange's options business to CBOE by March 31, 1997. During the interim four months, the parties will execute a definitive agreement and seek regulatory approval.

Below is a brief synopsis of the principal terms of the proposed transfer that will directly affect the Exchange's options community.

CBOE Trading Permits

CBOE will issue 75 trading Permits, each having a 7-year duration. Upon qualification pursuant to CBOE rules, Permit recipients will have:

1. the right to act as broker or dealer in transferred options (i.e., options traded on the Exchange and not dually listed on CBOE), as well as in options subsequently allocated to the transfer program by CBOE;

2. access to trade "by order" dually-listed options; and

3. the right to trade "by order" any other classes of CBOE options up to an aggregate of 20% of the holder's contract volume on CBOE in the calendar quarter preceding the trade.

In addition, each NYSE specialist unit will be appointed as the CBOE Designated Primary Market-Maker ("DPM") in its transferred specialty options. CBOE will allocate to the program at least 14 new options classes per year for the first 7 years after the transfer.

Permit holders will be subject generally to the same obligations under the CBOE rules as are regular CBOE members, except that all membership application fees will be waived in connection both with their applications for Permits and any subsequent applications for regular CBOE membership. Under certain circumstances, recipients of Permits who move to Chicago and qualify under CBOE rules may receive up to $10,000 per family for customary moving expenses.

Manner of Issuing Permits

The 75 Permits are to be issued as follows:

1. **Non-Specialist Firms ("Homesteader Rule").** Each NYSE non-specialist options firm (including sole proprietors) doing business on the NYSE options floor will be offered the same number of Permits as that firm has valid NYSE floor badges as of December 5, 1996. However, in order for the firm to actually receive Permits, the firm's current individual badge holders must personally move to Chicago and trade on CBOE as "nominees" of the firm. (Consistent with CBOE rules permitting partnerships and corporations to be members, the firms themselves will own the Permits.) CBOE may impose limits on transfers of Permits and prohibit substitutions of nominees in a manner designed to assure that Permits are not transferred, and that nominees remain with the firm at CBOE, for one year after issuance.

2. **Specialist Firms.** As in the case of non-specialist firms, each NYSE specialist options firm (including joint books) will be offered the same number of Permits as that firm has valid NYSE floor badges as of December 5, 1996. However, in contrast to non-specialist firms, no specified individual will be required to be a specialist firm's nominee or to move to or remain at CBOE as a condition of a Permit's effectiveness. Instead, the specialist firms can select the persons to become nominees and use the Permits. Nominees may be freely substituted, but CBOE may impose limits on transfers of Permits designed to assure that Permits are not transferred for one year after issuance.

3. **Creation of Lease Pool and Distribution of Proceeds.** CBOE will lease out any of the 75 Permits not issued as specified above, as well as any Permits revoked due to violation of CBOE restrictions on transfer and substitution of nominees, through an auction or other competitive process. The proceeds from the leases will be distributed pro rata to the approximately 92 persons who were (a) members using or leasing out their NYSE options trading rights ("OTRs") on September 5, 1996, or (b) holders of separated OTRs on that date, or to those who purchase OTRs from such persons. (See the Special Membership Bulletin dated September 6, 1996.)

New CBOE Trading Facility for NYSE Options

CBOE will provide a new and separate trading floor at its Chicago facility. Representatives of the Exchange's options community will have the opportunity to participate in the design of the new trading floor, which will have services and support facilities comparable to those used on CBOE's principal options trading floor.

Questions concerning this matter may be directed to Richard P. Bernard, Executive Vice President and General Counsel, 212-656-2222, or David Krell, Vice President, 212-656-2865.

The ChicagoBoard Options Exchange

Edward J. Joyce
Executive Vice President

LaSalle at Van Buren
Chicago, Illinois 60605 312 786-7310

DATE: April 10, 1997 Information Circular # 97-19

TO: CBOE Member Firms

FROM: E. Joyce

RE: Relocation of NYSE Options Program to CBOE

As you know, the CBOE is continuing to plan for the relocation of the NYSE options program to the CBOE. The relocation will take place over the weekend of April 25, 1997 with trading commencing at CBOE on Monday, April 28. While S.E.C. approval of the filing which details this relocation has not been obtained to date, it is expected that authorization will be obtained by April 21.

Below is a list of operational considerations which should be evaluated to prepare for the relocation to CBOE and a list of contact people whom are available to assist you with any operational questions relating to the new trading floor.

- Any out trades relating to transactions which occurred on the NYSE options floor should be resolved in NY prior to the relocation. The NYSE will be holding a special trade checking session to reconcile out trades.

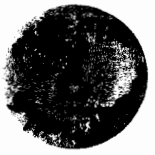
- Unfilled GTC orders on the NYSE options floor will be canceled at the close of business on Friday, April 25. To insure continued representation of the GTC orders, the Member Firms will be responsible to re-enter the replacement order to CBOE prior to the opening of business on Monday morning, April 28. Order books will be rebuilt in the sequence they are received on Monday morning. No orders will be accepted by CBOE prior to 6:00 a.m. on Monday, April 28.

- Member Firm and service bureau routing switches should be set to CBOE for classes previously traded on the NYSE options floor. This CBOE designation will provide for the routing of orders as dictated by the Member Firm and Exchange routing parameters.

- The CBOE will not relocate any option class which CBOE had dually listed with the NYSE prior to acquiring the business. Orders which are directed to the CBOE in these classes will be routed to the appropriate trading pit on the main trading floor. (See attached class lists.)

[CONFORMED COPY]

File No. SR-NYSE-97-05



SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form 19b-4

Proposed Rule Change

by

New York Stock Exchange, Inc.

February 26, 1997

Pursuant to Rule 19b-4 under the
Securities Exchange Act of 1934

Consists of 58 pages
[Conformed Copy Excludes Exhibits and Schedules]

1. Text of the Proposed Rule Change

A. The New York Stock Exchange, Inc. (the "Exchange" or "NYSE") has determined to cease maintaining a trading facility for transactions in options issued by The Options Clearing Corporation and proposes to facilitate transfer of its options business to the Chicago Board Options Exchange, Incorporated ("CBOE"). The agreement between the Exchange and CBOE that sets forth the terms and conditions pursuant to which the transfer will take place (the "Transfer Agreement") appears as Exhibit B to the parallel proposed rule change of CBOE, SR-CBOE-97-14. This proposed rule change incorporates Exhibit B to SR-CBOE-97-14.

As more fully described below, under the Transfer Agreement, CBOE will issue trading permits to NYSE options firms in accordance with the number of NYSE floor badges held by the firms' partners, employees and affiliates. Subject to certain limitations described in the Transfer Agreement, the Exchange proposes to have discretion to condition the permits' issuance upon the payment of any amounts owed to the Exchange by the options firms or their badge holders or other affiliates, as the case may be, which may include holders of the corresponding NYSE Options Trading Rights ("OTRs").

In addition, the Transfer Agreement gives the Exchange control over possible payments to certain holders of OTRs or their transferees arising from a lease pool of permits called for by the Transfer Agreement, as more fully described elsewhere in this filing. The Exchange proposes to have discretion to withhold permission for such payments until (1) any amounts owed to the Exchange by the OTR holder or its affiliates are paid (which may be effected by directing CBOE to make the payments directly to the Exchange until the indebtedness is satisfied) and (2) in the case where the OTR has been separated, the holder transfers his OTR to the Exchange.

B. Inapplicable.

C. Inapplicable.

2. Procedures of the Self-Regulatory Organization

A. The Exchange's Board of Directors approved this proposed rule change on November 7, 1996. This action constitutes the requisite approval under the Exchange's Certificate of Incorporation and Constitution.

B. The following persons on the staff of the Exchange are prepared to respond to questions and comments on this proposed rule change:

Richard P. Bernard, Executive Vice President and General Counsel	(212) 656-2222
David R. Krell, Vice President	(212) 656-2865

3. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

A. Purpose - The purpose of this proposed rule change is to effect the fair and orderly transfer of the Exchange's options business to CBOE and to secure for traders and brokers who currently make their living on the Exchange's options floor an opportunity to continue their occupations at CBOE.

The basic parameters of the transfer and their purposes, as well as the environmental factors that led to the transfer and molded the negotiations between the Exchange and CBOE, are described below.

(i) Overview

CBOE will acquire the options business conducted through the Exchange's options facilities pursuant to the Transfer Agreement. The "Effective Date" of the acquisition is scheduled for April 28, 1997, subject to fulfillment of conditions specified in the Transfer Agreement.

(ii) Background

In April 1996, the Exchange undertook a strategic review of the 13-year operation of its options business. In the course of the review, the Exchange considered the potential for overall growth in the options industry; explored the needs of the order-providing firms and the relationships through which the options business is done; assessed the existing capacity and structure in the options industry and the Exchange's existing and potential competitive position; and examined the scale of the effort necessary to make the Exchange's options business line profitable. The Exchange concluded that remaining in the options business, even at the then-current market share, would require significant capital expenditures, and that any effort to significantly improve market share would require an enormous expenditure of capital and human resources.

On May 2, upon presentation of the strategic review to the Exchange's Board of Directors, it was determined to investigate further the possibility of exiting the options business and directing the resources previously expended on that business to the Exchange's core equity business.

Publicity via Reuters and other news media followed this determination, resulting in numerous inquiries from options exchanges, commodities exchanges, member firms and others as to the possible acquisition of the Exchange's options business. Several of these inquiries mentioned the possibility of granting special trading privileges, relocation payments and other benefits to the Exchange's options members in connection with their collective relocation to the acquirer, as well as the possibility of paying licensing fees and other amounts to the Exchange.

In light of these inquiries and other factors, on June 24, 1996, the Exchange notified its members and member organizations that it would transmit to the various exchanges and others that had expressed interest in acquiring its options business proposed terms for the sale of the business, as well as certain operational and other statistical data. (See Special Membership Bulletin dated June 24, 1996, attached as a part of Exhibit A.) This information was sent on or about June 27, 1996, except as to one recipient to whom it was sent on July 19, 1996.

These transmissions resulted in a series of telephone and face-to-face discussions with a variety of potential purchasers. Three - the American Stock Exchange ("AMEX"), CBOE and the Philadelphia Stock Exchange ("PHLX") - provided detailed, written preliminary bids and executed confidentiality agreements with the Exchange.[1]

During these discussions, it became clear that because there are as many OTRs as there are Exchange members (a total of 1366), but only some 92 OTRs were directly involved in the options business, there was an overhang of 1274 OTRs which was complicating negotiations to obtain cost-free trading permits. Accordingly, by resolution on September 5, 1996, the Exchange's Board limited the

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[1] NYSE also met on several occasions with the New York Cotton Exchange ("Cotton Exchange"), but the Cotton Exchange did not make a written submission to NYSE and did not comply with any deadlines under NYSE's tender process during August and September 1996. Moreover, the Cotton Exchange faced barriers to entry not applicable to the other exchanges, including absence of registration as a national securities exchange with the Commission and lack of requisite systems and regulatory capacity. By letter to NYSE dated December 16, 1996, (attached as a part of Exhibit A), the Cotton Exchange indicated that it had no interest in acquiring NYSE's options business.

universe of OTR holders potentially entitled to direct benefits from the transfer to present and future holders of the 92 "activated" OTRs, that is, to: (1) regular members who already were using or leasing out their OTRs, (2) holders of OTRs separated from equity memberships, and (3) subsequent purchasers from them.

Based upon review of these preliminary bids and other factors, the Exchange sent to those three preliminary bidders a letter dated September 10, 1996, requesting firm, written bids (the acceptance of which by NYSE would create a letter of intent between the parties), providing parameters for the bids, and asking that the bids be submitted within a week. The Exchange received written bids from CBOE and AMEX, each dated September 17, 1996, and from PHLX, dated September 16, 1996.

Based upon its comparison of these bids, telephone conferences and discussions with representatives of the bidders, the Exchange staff recommended the CBOE bid to the Exchange's Board of Directors. The recommendation was based on several factors, including that CBOE's bid was competitive with the other bids financially and generally superior in terms of the opportunity it promised for NYSE options traders and brokers to continue to make their livings in the options business. In particular, the CBOE bid, which was competitive from the standpoint of trading rights, offered a separate, state-of-the-art facility for the transferred business. The likelihood that CBOE would remain viable for the long term was also a key factor.

On October 3, 1996, the Board indicated its preference for negotiations with CBOE based upon its bid. (See Special Membership Bulletin dated October 3, 1996, attached as a part of Exhibit A.) By letter to CBOE dated October 3, 1996, NYSE accepted CBOE's bid, thereby creating a letter of intent between NYSE and CBOE.

On November 7, 1996, following further clarification of CBOE's bid and extensive discussions between CBOE and NYSE, the Board authorized, if appropriate, execution and delivery of the requisite agreements and other appropriate actions with CBOE to consummate the proposed transaction.

On December 5, 1996, the Exchange and CBOE executed a revised letter of intent for the purpose of further clarifying certain points. On December 9, 1996, the Exchange distributed on its options floor a memorandum explaining the proposed transaction and, shortly thereafter, mailed copies thereof to the 92 OTR holders discussed above. (See copy of Memorandum to Options Members and Member Organizations dated December 9, 1996,

attached as a part of Exhibit A.) The Exchange and CBOE executed the Transfer Agreement as of February 5, 1997.

(iii) Trading Permits and How They Benefit Exchange Options Firms and Options Trading Rights

In Item 3 of SR-CBOE-97-14, CBOE describes in detail (1) the rights and privileges available to transferring NYSE options members pursuant to the rules CBOE proposes to adopt in accordance with the Transfer Agreement and (2) the additional benefits to be received by OTR holders. This section highlights the key elements of those rights, privileges and benefits.

(a) Creation and Issuance of CBOE Trading Permits

CBOE will create and issue 75 trading Permits, each having a seven-year duration. Subject to limited exceptions, the Permits may not be sold, leased or transferred for a period of one year after the Effective Date under the Transfer Agreement. The Permits will provide for trading on a new and separate trading floor at CBOE's Chicago facility. Representatives of the Exchange's options community will have the opportunity to participate in the design of the new trading floor, which will have services and support facilities comparable to those used on CBOE's principal options trading floor. Upon qualification pursuant to CBOE rules, Permit recipients will have:

(1) the right to act as broker or dealer in transferred options (i.e., options traded on NYSE and not dually listed on CBOE), as well as in options subsequently allocated to the program by CBOE;

(2) the right to trade "by order" as principal on CBOE's principal trading facility options dually listed on NYSE and CBOE; and

(3) the right to trade "by order" as principal on CBOE's principal trading facility any other classes of CBOE options up to an aggregate of 20 percent of the holder's quarterly contract volume on CBOE.

In addition, each NYSE options specialist unit will be appointed as the CBOE Designated Primary Market-Maker ("DPM") in its transferred specialty options. CBOE will allocate to the new program securities underlying at least 14 new options classes per year for the first seven years after the transfer.

Permit holders will be subject generally to the same obligations under the CBOE rules as are regular CBOE members, except that application fees will be waived in certain instances. Under certain circumstances, recipients of Permits or their nominees who move their principal residence to Chicago and qualify under CBOE rules may receive up to $10,000 per Permit for customary moving expenses.

(b) Recipients of Permits; Manner of Issuing Permits; Lease Pool

The 75 Permits are to be issued as follows:

(1) Non-Specialist Firms ("Homesteader Rule"). Each Exchange non-specialist options firm (including sole proprietors) doing business on the NYSE options floor will be offered the same number of Permits as that firm had valid NYSE floor badges as of December 5, 1996. However in order for the firm to actually receive Permits, the firm's individual badge holders on that date must personally qualify and trade on CBOE as individual permit holders or as "nominees" of the firms owning permits. (Consistent with CBOE rules permitting partnerships and corporations to be members, the firms themselves may own Permits.) CBOE may impose limits on transfers of Permits and prohibit substitutions of nominees in a manner designed to assure that Permits are not transferred, and that nominees remain with the firm at CBOE, for one year after issuance.

(2) Specialist Firms. As in the case of non-specialist firms, each Exchange specialist options firm (including joint books) will be offered the same number of Permits as that firm has valid NYSE floor badges as of December 5, 1996. However in contrast to non-specialist firms, no specified individual will be required to be a specialist firm's nominee or to move to or remain at CBOE as a condition of a Permit's effectiveness. Instead, the specialist firms can select the persons to

become nominees and use the Permits. Nominees may be freely substituted, but CBOE may impose limits on transfers of Permits designed to assure that Permits are not transferred for one year after issuance.

(3) Creation of Lease Pool and Distribution of Proceeds. CBOE will lease out any of the 75 Permits not issued as specified above, as well as any Permits revoked due to violation of CBOE restrictions on transfer and substitution of nominees, through an auction or other competitive process. The proceeds from the leases will be distributed pro rata to the approximately 92 persons who, as a result of their OTRs, were entitled to possible benefits, as discussed above.

(c) Transfer Agreement Provisions As Pragmatic Compromises

The elements of the transfer outlined above represent a series of pragmatic compromises negotiated to reconcile the respective goals of the Exchange and CBOE. As noted above, the Exchange sought to minimize the disruption in the lives of the option badge holders and to maximize the opportunity for its options traders and brokers to continue to make their livings in the options business after the transfer.

In contrast, CBOE sought to maximize the success of the transferred market as a whole by seeking to assure (1) that the NYSE options specialists participated in the transfer, (2) that NYSE option traders and brokers with trading experience moved to Chicago, and (3) that the number of permits issued optimized the viability of the transferred market as a whole and of the businesses of the permit holders individually. Thus, for example, the Transfer Agreement's "homesteader" element was designed to support CBOE's general goal of attracting experienced traders. However, the omission of a homesteading requirement for specialists reflects the higher priority attached by CBOE to assuring that all of the options specialists participated in the transfer.

(iv) Purchase Price and Economic Rationale

The purchase price under the Transfer Agreement is $5,000,000. Following is a discussion of the economic basis supporting this purchase price and the transaction, generally.

By acquiring the Exchange's options business, CBOE will obtain a trained pool of talent with experience in the trading characteristics of the transferring option classes and with customer relationships. Assuming that these attributes and CBOE's own assets enable it at least to retain the Exchange's market share, CBOE will acquire a substantial revenue stream offset by only marginal increases in operating costs. (CBOE will also face a one-time investment in facilities.)

Typically in the sale of a going business, the seller receives a multiple of annual revenues, especially if lower fixed or marginal costs, or other factors, allow the purchaser a better opportunity than the seller to realize benefit from existing or anticipated revenues. The Exchange believes that the Transfer Agreement does no more than recognize an appropriate sharing of these revenues.

(v) Use of Proceeds

The Exchange will retain $1.2 million of the purchase price to partially offset Exchange exit costs and as compensation for a ten-year license given to CBOE to list and trade options on the NYSE Composite Index. The Exchange will distribute the remaining $3.8 million of the purchase price, net of an appropriate tax reserve, on a pro rata basis to all its 1366 members, subject to a determination of whether or not the distribution will be taxed both to the Exchange and to the member recipients. The tax reserve recognizes that the distribution of the lease pool proceeds discussed elsewhere in this filing may also result in imputed income to the Exchange. The Exchange will apply to the Internal Revenue Service for Private Letter Rulings to resolve the two tax questions. Pending receipt of the rulings, CBOE will pay the $3.8 million into an Escrow Account.

If the Exchange receives an adverse ruling on the lease proceeds, a portion of the escrow account will be released annually as needed to fund tax payments, with any surplus reverting to the Exchange's treasury after the lease pool terminates in the year 2004. If the Exchange receives an adverse ruling on the distribution to the 1366 members, distribution (net of any tax reserve for the lease pool proceeds) of some or all of the escrow account may be made

to the NYSE Foundation[2] instead of the 1366 members. Under no circumstances will escrow funds, except for amounts owed to the Exchange and any tax reserves or reserve surplus, be distributed other than to the 1366 members or the NYSE Foundation.

(vi) Conditions to Receipt of Permits and Lease-Pool Payments

The discretionary conditions requiring payment of outstanding amounts owing to the Exchange implement similar, existing requirements under the Exchange's Constitution and rules. (See, e.g., NYSE Constitution, Article II, Section 8; NYSE Rule 795(d)(i); and NYSE Rule 795.10, Supplementary Material.) The discretionary condition requiring transfer of separated OTRs to the Exchange is a housekeeping matter designed to assure that all OTRs, which will have only speculative value at the conclusion of the transfer, are held either by regular members or the Exchange itself.

B. Basis - The basis under the Securities Exchange Act of 1934 ("1934 Act") for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a full and open market and a national market system, and, in general, to protect investors and the public interest.

4. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the 1934 Act.

In Item 4 of SR-CBOE-97-14, CBOE outlines the way in which the transfer enhances the competitive environment and imposes no restrictions on trading by NYSE or other markets of the stock options now traded on NYSE, other than options on the NYSE Composite Index subject to the license agreement with CBOE. This proposed rule change incorporates Item 4 of SR-CBOE-97-14.

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[2] The NYSE Foundation, authorized by the Board of Directors of the Exchange in October 1983 and incorporated as a not-for-profit organization in November 1983, provides funds for educational, civic and charitable purposes. The Foundation's charitable giving focuses on three main areas: education, quality of life, and community. The escrow funds would be available for any such purposes other than those specifically targeted at the securities industry.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has received the following written comments, each of which is attached as a part of Exhibit A, from members or other interested parties:

(1) Letter to Richard Grasso, Chairman and Chief Executive Officer of the Exchange, from Stephen J. O'Grady, Frank Barbato and Greg Tenbekjian, Exchange options traders, dated November 22, 1996, objecting to the proposed transaction with CBOE on the grounds that various classes of options participants were not treated equally. The Exchange has not made and could not make any representation to members concerning exact equality of treatment. As more fully explained elsewhere in this filing, the bid process initiated by the Exchange brought to bear the dictates of the market which, generally, placed a higher premium on specialist participation in any transfer than on participation by brokers. The Exchange, which was under no obligation to obtain any benefits for any options participants, felt it was unreasonable to reject potential benefits to almost all options participants, including brokers whose badge holders were willing to transfer to CBOE, because the marketplace placed a higher premium on participation by one group than another.

(2) Letter to Lewis J. Horowitz, Executive Vice President of the Exchange, from Joseph J. O'Neill, President of the New York Cotton Exchange, dated December 16, 1996, to the effect that the Cotton Exchange had no interest in acquiring the Exchange's options operations.

(3) Letter to Rudolph Giuliani, Mayor of the City of New York, from Mark Green, Public Advocate of the City of New York, dated January 8, 1997, regarding possible loss of jobs in New York City as a result of the transfer to CBOE.

(4) Letter to the Exchange from Isaac M. Ovadiah, an OTR lessor, dated January 9, 1997, reflecting the writer's intent to arbitrate against the Exchange's future plans concerning trading rights and to apply to the federal courts seeking injunctive relief. The Exchange knows of no basis pursuant to which arbitration would be available to Mr. Ovadiah and no basis for the granting of an injunction or similar

relief with respect to any of the proposed transactions with CBOE. The Exchange has received no further written communication from Mr. Ovadiah concerning the matters referred to above.

(5) Letter to William Johnston, President and Chief Operating Officer of the Exchange, from Cohen, Duffy, McGowan & Co., LLC, dated January 16, 1997, to the effect that the Exchange's process for the proposed transfer to CBOE was fair and that the economic benefit to members choosing to go to CBOE will surpass anything they could have achieved elsewhere.

(6) Memorandum to William Johnston, President and Chief Operating Officer of the Exchange, from Mark Duffy, an Exchange options trader, dated January 20, 1997, to the effect that the proposed CBOE transaction is fair and provides beneficial opportunities.

(7) Letter to William Johnston, President and Chief Operating Officer of the Exchange, from Lawrence Helfant, Inc., dated February 4, 1997, indicating that the firm did not support any possible legal action against the Exchange by OTR holders with respect to the proposed transfer to CBOE and that it endorsed the proposed transfer.

(8) Letter to William Johnston, President and Chief Operating Officer of the Exchange, from BE Partners, dated February 12, 1997, to the effect that the CBOE proposal was the best of the proposals from the major exchanges for transfer of the options business.

(9) Undated notice entitled "An Open Letter To The Members, Directors, and Chairman of the New York Stock Exchange" from certain NYSE options participants named therein, as distributed on the Exchange's Options floor, reflecting opposition to the proposed transaction. The Exchange notes that it could simply have terminated its options business and sought no benefits for any options participants. However, as is more fully explained elsewhere in this filing, the Exchange has obtained substantial benefits for a broad cross-section of options participants. The objections voiced in this notice do not take into account the foregoing fact or the limitations and trade-offs inherent in the negotiation process necessarily undertaken by the Exchange in connection with the proposed transaction. The Exchange believes that all

objections set forth in this notice have been addressed in this rule filing and that the proposed transaction will be beneficial to the Exchange's overall membership.

(10) Undated and unsigned notice entitled "NYSE Options Update", as distributed on the Exchange options floor, alleging various shortcomings in the proposed transaction, all of which have been responded to or explained in the body of this filing. An abbreviated reiteration of those responses with respect to all substantive issues in the notice follows: (i) the assertion that NYSE members who have not activated their OTRs will receive no compensation is not correct; depending upon rulings from the Internal Revenue Services with respect to tax treatment of certain proceeds from the transaction, members may receive a pro rata distribution of some or all of such proceeds, or will benefit indirectly from contribution of amounts to the NYSE Foundation; (ii) as to OTR lessors "losing their income" from OTR leases, it is anticipated that, subject to certain contingencies, OTR lessors will receive, for 7 years, payments from the lease pool to be maintained by CBOE which will exceed lease payments now received for OTRs; and (iii) as to current "operatives" of OTRs receiving "severely limited trading rights on CBOE", in fact, CBOE is creating a new and separate trading floor with new and very broad-based trading rights available in former NYSE options and other options to transferring NYSE participants who meet CBOE rules and requirements.

6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the time period specified in Section 19(b)(2) of the 1934 Act.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness pursuant to Section 19(b)(2)

The Exchange does not seek summary effectiveness or accelerated effectiveness of this proposed rule change at this time.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

This proposed rule change is not based on the rules of another self-regulatory organization or of the Commission. However, this proposed rule change is related to the parallel proposed rule change of CBOE, SR-CBOE-97-14, in that both rule changes address the proposed transfer of the Exchange's options business to CBOE. Certain provisions of that CBOE rule filing are incorporated by reference in this NYSE rule filing where indicated.

9. Exhibits

Exhibit 1 - Form of Notice of Proposed Rule Change for Publication in the Federal Register.

Exhibit A

(1) Special Membership Bulletin, dated June 24, 1996.

(2) Special Membership Bulletin, dated September 6, 1996.

(3) Special Membership Bulletin, dated October 3, 1996.

(4) Memorandum to Options Members and Member Organizations, dated December 9, 1996.

(5) Written comments:

(a) Letter to Richard Grasso, Chairman and Chief Executive Officer of the Exchange, from Stephen G. O'Grady, Frank Barbato and Greg Tenbekjian, Exchange options traders, dated November 22, 1996.

(b) Letter to Lewis J. Horowitz, Executive Vice President of the Exchange, from Joseph J. O'Neill, President of the New York Cotton Exchange, dated December 16, 1996.

(c) Letter to Rudolph Giuliani, Mayor of the City of New York, from Mark Green, Public Advocate of the City of New York, dated January 8, 1997.

(d) Letter to the Exchange from Isaac M. Ovadiah, an OTR lessor, dated January 9, 1997.

(e) Letter to William Johnston, President and Chief Operating Officer of the Exchange, from Cohen, Duffy, McGowan & Co., LLC., dated January 16, 1997.

(f) Memorandum to William Johnston, President and Chief Operating Officer of the Exchange, from Mark Duffy, an Exchange options trader, dated January 20, 1997.

(g) Letter to William Johnston, President and Chief Operating Officer of the Exchange, from Lawrence Helfant, Inc., dated February 4, 1997.

(h) Letter to William Johnston, President and Chief Operating Officer of the Exchange, from BE Partners, dated February 12, 1997.

(i) Undated notice entitled "An Open Letter To The Members, Directors, and Chairman of the New York Stock Exchange" from certain NYSE options participants named therein.

(j) Undated and unsigned notice entitled "NYSE Options Update".

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the self-regulatory organization has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

New York Stock Exchange, Inc.

By /S/ James E. Buck
James E. Buck
Senior Vice President and Secretary

New York, NY 10005
212-656-2067

James E. Buck
Senior Vice President
and Secretary

April 18, 1997

NYSE
New York
Stock Exchange, Inc.

Ms. Margaret J. Blake
Special Counsel
Division of Market Regulation
Securities and Exchange Commission
450 5th Street, N.W.
Mail Stop 5-1
Washington, DC 20549

Re: Amendment to File No. SR-NYSE-97-05
Options Transfer with CBOE

Dear Ms. Blake:

By this letter, the New York Stock Exchange, Inc. ("Exchange") amends its proposed rule change under file number SR-NYSE-97-05 (the "Rule Change") made pursuant to Rule 19b-4 under the Securities Exchange Act of 1934, to the following effect:

> Notwithstanding any contrary provision of the Rule Change, any surplus, in excess of $1,000, of reserve tax funds remaining in the escrow account after funding of any Exchange tax payments on lease pool proceeds shall not revert to the Exchange treasury but, instead, shall be paid, in the Exchange's discretion either to the NYSE Foundation or pro rata to the Exchange's 1366 members. The foregoing shall not limit other permitted distributions from the escrow account. Except as expressly set forth herein, the Rule Change is not otherwise amended.

Please contact the undersigned or Richard P. Bernard (212-656-2222) with any questions or comments.

Sincerely yours,

James E. Buck

Tel 212 656 2222
Fax 212 656 2267

Richard P. Bernard
Executive Vice President
General Counsel

NYSE
New York
Stock Exchange, Inc.

April 21, 1997

Michael A. Walinskas
Branch Chief
Division of Market Regulation
Securities and Exchange Commission
450 5th Street, N.W.
Mail Stop 5-1
Washington, D.C. 20549

Re: Response to Comment Letters Concerning SR-NYSE-97-05

Dear Mr. Walinskas:

You have asked the Exchange to respond to the following five comment letters received by the Commission in connection with Exchange filing SR-NYSE-97-05 (the "Exchange Filing"), which concerns the proposed transfer of the Exchange's options business to the Chicago Board Options Exchange ("CBOE"): (1) letter dated March 10, 1997, from Simon Erlich, (2) letter dated March 11, 1997, from Andrew Rothlein, (3) letter dated April 1, 1997, from Ernest M. Cortegiano, and (4) letters dated April 4, 1997 and April 10, 1997, from Isaac M. Ovadiah. Our response follows.

Three of the letters oppose the proposed transfer on the grounds that it is allegedly "anti-competitive," "discriminatory," or otherwise wrongful due to certain differences in the benefits available to Exchange specialist and non-specialist firms. As was explained in the Exchange Filing, the Exchange initiated a broad-based tender process in connection with the transfer of its options business. This process brought to bear the dictates of the market which, generally, placed a premium on specialists, as opposed to non-specialists, participating in any transfer. The distinction in the Exchange's agreement with CBOE that allows substitution of nominees by specialist firms but prohibits substitution by non-specialist firms in order to obtain CBOE trading permits reflects that premium. There is nothing anti-competitive in the market establishing such a distinction between two types of options market participants with largely disparate backgrounds, rights, duties and functions. This is especially true in light of the fact that a badge holder of a non-specialist firm can receive the benefits of a permit so long as

he or she contributes the attributes that CBOE believes will most enhance the success of the transferred market: personal skills, personal experience and continuity of personal participation.

The allegations of unreasonable discrimination among the classes of potential claimants to the trading rights must also be considered in the context of the economic necessity of rationing the permits. The universe of potential claimants includes not only the badge holders, their firms and the 92 holders of "activated" OTRs, but also the holders of the other 1274 "unactivated" OTRs. CBOE felt strongly, and our own experience with OTR valuation validated, that the transferred market would economically support only a limited number of permits. Through negotiation, we arrived at 75. The various ways in which each class of potential claimants is satisfied reflect our effort with CBOE to optimally ration the 75 permits and the revenue from the transfer among the more than 1400 claimants in a way that also maximized the business opportunities created in the transferred market. While other outcomes certainly were possible, we believe the negotiated resolution passes the tests of both reason and fairness.

Three of the letters assert as inappropriate the proposal that the Exchange have discretion to require holders of options trading rights ("OTR") that are separated from their Exchange equity memberships to surrender these OTRs as a condition of receiving payments under the lease pool to be established by CBOE. These assertions are moot because, although the Exchange believes that the surrender of such OTRs would be a permissible and appropriate housekeeping measure, it has determined not to require such surrender as a condition of participation in the CBOE lease pool.

Two of the letters allude to lost or reduced OTR lease revenues that allegedly will result from the transfer. These letters ignore the fact that, subject to certain contingencies, OTR owners will receive, for seven years, payments from the CBOE lease pool that are anticipated to substantially exceed typical lease payments now received for OTRs. Moreover, had the Exchange simply ceased operation of its options business without transferring it to CBOE, OTR lessors would thereafter have received no lease payments of any kind.

Finally, in considering claims by OTR holders of "entitlements" and allegation by them of lost revenues, one must bear in mind that OTRs are mere licenses for access to certain trading facilities that are about to evaporate. OTRs carry none of the attributes of equity ownership, such as voting rights and

the right to participate in liquidation proceeds, that attach to the 1366 regular memberships.

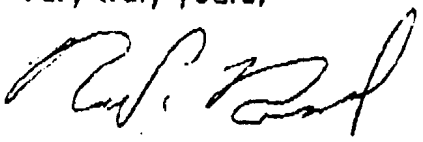
Various assertions in the letters to the effect that the proposed transaction with CBOE is "monopolistic" or an unlawful circumvention of Commission policy on dual listings of options are simply wrong. The Exchange and CBOE have no agreement or understanding, express or implied, to restrict dual listings of options or to restrict, monopolize or foreclose any market.

Related assertions about the basis for valuing the transaction, such as that the only inherent value in the proposed transfer is the Exchange's "covenant not to compete", are similarly wrong, for several reasons. First, the transfer agreement with CBOE does not contain a covenant not to compete.[1] Second, the assertions ignore the value inherent in obtaining a trained pool of talent with experience in the trading characteristics of their respective options classes and established customer relationships and revenue streams. Last, it ignores the value inherent in the 10 year license to CBOE for use of the NYSE Composite Index. In any event, the value of the transfer of the Exchange's options business was determined by competitive bids in a free and open market setting.

* * *

Certain of the arguments in the comment letters are speculative or based on manifest factual error. In addition, a few arguments are directed at the structure of the CBOE market. We have not tried to respond to either type of argument. However, if we have failed to address any particular comment that you believe merits discussion, or if any of our responses requires elaboration, please do not hesitate to bring it to our attention.

Very truly yours,



[1] The transfer agreement between the Exchange and CBOE does not prohibit competition between them. It does provide for a one-time, "benefit of the bargain" payment of $500,000 to CBOE should the Exchange operate a trading facility for the purpose of effecting trades in Options (as defined) within one year of the transfer.

	Stock	Sym	Div	Yld %	PE	Vol 100s	Hi	Lo	Close	Net Chg
	VA CommBk	VCBK				36	15¾	15⅛	15⅜	+ ½
	VA Gas	VGCO	.87	1.8	76	176	49⅛	48¼	48¾	– 1⅛
5	ViroPharma	VPHM			dd	528	8⅝	7⅛	8	+ ⅛
1¾	VirtualFd	VFND			dd	1156	2⅛	1¾	1⅞	+ ⅛
7	VisGenetics	VGIN			dd	416	18⅝	17¾	18	+ ⅝
4	Visio	VSIO			24	5363	30½	28¾	29¼	+ ¼
3⅜	Vision21	EYESE			14	100	3⅝	3⅛	3½	...
17½	VistaBcp	VBNJ	.48b	2.5	17	12	19½	19⅜	19½	+ ⅞
2⅛	VistaEyecare	VSTA			42	419	5½	4⅝	5½	+ ⅝
12⅝	VistaInfo	VNF			dd	903	10½	10	10⅛	– ⅛
1⅜	VistaMedTch	VMTI			dd	80	1⅞	1⅜	1⅝	+ ⅛
5⅛	Vistana	VSTN			16	202	16⅞	16⅝	16¾	– ⅛
17	VisualNet	VNWK				2387	34⅝	30½	32	– 2¼
58½	Visx	VISX			cc	37233	60⅛	53⅝	57	– 3⅛
14	VitalSign	VITL	.16	.8	17	20	19⅜	19⅛	19¾	+ ⅝
1⅛	VitalCom	VCOM			dd	91	2⅛	2	2	– ⅛
7½	VitechAm	VTCH	p		7	1078	9⅛	9⅛	9⅛	– ⅛
17⅛	VitesseSemi	VTSS			66	15855	52⅞	51⅛	52⅝	+ 1⅜
4⅛	Vitran g	VTNA	.07			4	6	6	6	– ¼
3⅛	VividTch	VVID			dd	715	3½	3⅜	3⅜	+ ⅛
2	Vnus	VVUS			dd	2841	4⅜	4⅛	4⅜	– ⅛
5⅝	VocalTec	VOCL			dd	2289	11¼	10⅝	10¾	– ⅛
1¾	VodaviTch	VTEK			18	16	2⅝	2⅝	2⅝	– ⅛
1	VoiceCtrl	VCSI			dd	1410	3⅜	3⅜	3⅜	...
16⅜	VoiceStream	VSTR				3745	27½	26¼	26⅛	...
19¼	Volvo ADR	VOLVY	.72e	2.8		302	26	25½	25⅝	– ⅝
1⅝	V ONE	VONE			dd	776	2⅜	2⅛	2½	– ⅛
½	Voxware	VOXW			dd	326	1⅛	1	1⅛	– ⅛
2	VtalOp	VTEL			dd	2838	5½	4¾	5	– ⅛
2⅝	Vysis	VYSI			dd	193	4	3¾	4	+ ⅛

-W-W-W-

6	WLR Foods	WLRF				4	403	7⅛	7	7½ – ⅛
3⅜	WMF Gp	WMFG			dd	29	6¼	6	6	– ¼
3	WPI Grp	WPIC			dd	468	4⅛	3⅛	3⅛	– ⅛
34¼	WPP Gp	WPPGY	.14e	.2		577	86	82	82	– 2¾
2¾	WSI Ind	WSCI			9	52	3½	3⅜	3½	+ ⅛
14⅝	WVS Fin	WVFC	.64	4.2	15	59	15⅛	15	15⅛	...
7	WainwrightBk	WAIN	.08	1.0	13	22	8⅛	8	8	– ¼
6	Walbro	WALB			30	439	19¾	19⅜	19⅜	...
12½	Walbro pf	WALBP	2.00	7.9		357	25½	25⅛	25⅛	– ⅛
2⅝	Walkinstctv	WALK			21	1769	3½	3⅜	3⅜	+ ⅛
9⅛	WallData	WALL			18	1197	10⅝	10½	10⅝	– ⅛
1⅝	WalmFnl	WMUT			dd	26	2⅛	2⅛	2⅛	– ⅛
14⅛	WangLb	WANG			dd	2270	28¼	28	28⅛	– ⅜
2⅛	WangLb wt	WANGW				736	7⅝	7½	7⅝	+ ⅛
4½	WarnCldct ADR	WCRX			dd	496	8¾	8	8⅜	+ ⅜
2⅞	Warrantech	WTEC			21	245	3⅝	3½	3½	...
7	WarrenBcp	WRNB	.40a	4.7	12	288	8⅛	8½	8½	– ⅛
9⅜	WarwickDmby	WSBI	.18f	1.3		69	14	13¼	13⅜	– ⅜
8¼	WashBkng	WBCO	.16	1.5	20	25	10⅜	10⅛	10⅜	– ⅛
20⅞	WashFed	WFSL	.88b	4.0	11	1278	22⅜	22	22⅛	+ ⅛
15⅞	WashTrBcp	WASH	.44f	2.5	18	30	18½	17½	17½	– ¼
13¾	WstaComm	WCMX			dd	808	29⅛	28	28	– ⅛
12⅛	Wastelnd	WWIN			20	35	16⅜	16	16⅛	– ⅛
7½	WtrhsWdg	WATFZ	.31e	3.0		13	10¾	9¾	10½	...
3⅝	Waxtrax	WTRS	.04	.8	8	5	4⅝	4⅜	4⅝	– 3/16
2⅝	WaveTch	WAVT			dd	26	4¼	4⅛	4¼	– ⅛
3¼	WavePhore	WAVD			dd	7519	7⅝	6⅞	7⅛	...
20	WD40	WDFC	1.28	4.9	20	143	26⅛	25⅝	25⅝	– ¼
17½	WebstrFnl	WBST	.48f	1.7	16	1470	29½	28	28⅛	– ⅛
22	WebTrends	WEBT				8039	27¾	23⅛	27⅝	+ ⅛
11¼	WernrEnt	WERN	.16	.5	15	617	19⅝	18¼	18¼	– 3/16
22	Westbanco	WSBC	.88	3.0	22	100	29⅝	29⅛	29⅝	+ ⅛
16⅛	WestyJessen	WJCO			20	300	34⅛	33⅞	33⅞	– 1/16
14¹³⁄₁₆	WstCstBcp	WCBO	.22	1.3	16	231	18⅝	17⅝	17⅝	– 3/16
8¼	WstEssexBcp	WEBK	.08p			14	9⅝	9¼	9¼	...
6⅝	WestMarine	WMAR			cc	734	13¾	13⅛	13½	– ¼
7¼	WstTeleSvcs	WTSC			10	91	7¾	7⅝	7⅜	– ⅜
4½	Westaff	WSTF			38	302	7⅝	7¼	7¼	– ½
23⅝	WstamBcp	WABC	.64	1.9	19	1062	34½	33¾	33½	– ⅝
9⅛	Westbank	WBKC	.40	4.1	11	45	9⅝	9⅛	9⅛	– ⅛
2¾	WestellTch	WSTL			dd	8438	7⅛	8⅜	8⅝	+ 1/16
16⅛	Westerlnd	WSTR	.56f	3.5	12	11	16⅝	16⅛	16⅛	– ⅛
24⅝	WstnBcp	WEBC	.80	2.3	42	1731	40⅝	39	39½	– 1
5¼	WstlBeef	BEEF			12	2	6½	6½	6½	...
19⅝	WstnOH Fnl	WOFC	1.00	4.5	35	9	22¼	22⅛	22⅛	– ¼
3⅛	WstWater	WWTR			dd	129	3¼	3	3¼	...
8⅛	WstlWeb A	WWCA			dd	7453	27	25⅝	26⅛	– ⅛
10½	WstnInkPR	WBPR	.12	.9	7	159	14	13⅜	13⅛	– ⅜

Big Board Sees Only Limited Demand For Night Trading, but Feels Compelled

By GREG IP

Staff Reporter of THE WALL STREET JOURNAL.

NEW YORK—Despite seeing little demand or need, the New York Stock Exchange may extend its trading hours for competitive reasons, said Richard Grasso, its chief executive officer.

The remarks were the exchange's latest update on the issue of starting an evening-hours trading session to continue trading stocks after the usual 4 p.m. Eastern-time close. Such extended trading could come to U.S. stock markets as early as July if those pressing for it have their way; or it may not happen until next year, if at all.

"No one understands why it's going to happen, but everyone believes it will happen," Mr. Grasso said in an interview. "I'd prefer that it not. I don't think there is sufficient demand. But I don't think anyone is willing to say they're willing to [give up] to a competitor a potential inroad."

Richard Grasso

Some securities-industry executives are also bothered by the rush.

"It seems to be an ego race by the stock exchange and the Nasdaq as far as who's going to do this first," said Benjamin Edwards, chairman and chief executive officer of A.G. Edwards Inc., one of the largest full-service brokerage firms serving primarily individuals. "I don't know why there's a rush. If there's a desirable thing to do, we should take our time and let people gear up for it so it doesn't cause chaos."

Mr. Grasso also questioned if investors who enter orders in the evening would actually want those orders executed then, as some discount-brokerage-firm executives maintain. Instead, they may want to participate in the heavy volume of trading available at the opening of trading, he said at a news conference announcing the Big Board listing later this year of Japan's Toyota Motor Corp.

Nasdaq Is Set to Vote

The board of the Nasdaq Stock Market is to vote tomorrow on a proposal to add an evening trading session from 5:30 to 9 p.m. Eastern time from Monday to Thursday. Current trading hours are 9:30 a.m. to 4 p.m., Monday to Friday. The board of the [illegible] Inc., is expected to launch an evening trading session for individuals in mid-July. Instinet Corp., a unit of Britain's Reuters Group PLC, is also planning to offer evening trading to individuals. But unlike these competitors, Nasdaq and the Big Board will need the Securities and Exchange Commission's approval to extend hours. The SEC has indicated it first wants assurances that the markets are fully prepared to handle the year-2000 computer bug.

Mr. Grasso acknowledged as much, saying he worries "about the quality and depth of liquidity. We have got a major systemic issue coming up in terms of the millennium change."

The Specialists' Situation

Mr. Grasso said the exchange's floor specialists, who must use their capital to keep bid-ask spreads narrow and price movements orderly in individual stocks, will likely be held to different standards in the evening, when a given stock will have less volume, and thus trade differently. Markets "have a huge responsibility to communicate to and educate investors not to expect" the same ease of trading in the evening they have during the day, he said.

Mr. Edwards said firms such as his will face strains on their computer capacity. "We have a huge investment in computers, all humming and whirring, doing transactions while the markets are open. When the markets are closed, we turn a lever or switch and they start figuring and sending out bills. If you extend the hours . . . the time we're using our computers for sending bills will have to be spent doing trading."

Some regional exchanges may also extend hours if the primary markets do. "I know the industry doesn't like it and the members aren't going to like it, but what are you going to do—have different hours from New York?" said Meyer S. Frucher, chairman and CEO of the Philadelphia Stock Exchange.

Representatives for the Chicago Stock Exchange, the San Francisco-based Pacific Exchange and the Chicago Board Options Exchange also said if the Big Board and Nasdaq extend hours, they may follow suit.

Separately, Mr. Grasso and Mr. Frucher have talked about what their two exchanges might be able to do together in the wake of the smaller exchange's failed attempt to merge with the NASD's American Stock Exchange unit, but both said

About the NYSE Constitution

The Constitution of the New York Stock Exchange, Inc.

NYSE Constitution

Proposed Changes

- The SEC approved changes to the NYSE Constitution on February 16, 2005 which have been incorporated. To review specific changes, please reference SR-NYSE-2004-54 in the Proposed Rules Section.

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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-38542 ; File No. SR-NYSE-97-05)
April 23, 1997

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Relating to the Agreement Transferring the New York Stock Exchange Options Business to the Chicago Board Options Exchange, Incorporated.

I. Introduction

On March 3, 1997, the New York Stock Exchange, Inc., ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] a proposed rule change relating to the agreement transferring the NYSE's options business to the Chicago Board Options Exchange, Inc., ("CBOE"). The proposed rule change was published for comment in Securities Exchange Act Release No. 38376 (March 7, 1997), 62 FR 12671 (March 17, 1997). On April 22, 1997, NYSE amended the filing.[3] The Commission received six comment letters on the proposal.[4]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] Letter from James E. Buck, Senior Vice President and Secretary, NYSE to Margaret J. Blake, Special Counsel, Division of Market Regulation, Commission (April 18, 1997).

[4] Letters from Simon Erlich, Options Member, NYSE, to Jonathan G. Katz, Secretary, Commission (March 19, 1997) ("Erlich Letter"); Andrew Rothlein, Stock and Index Option Broker-Dealer, NYSE, to Jonathan G. Katz, Secretary, Commission (April 4, 1997) ("Rothlein Letter"); Isaac M. Ovadiah, G.P., to Jonathan G. Katz, Secretary, Commission (April 7, 1997) ("Ovadiah Letter"); Ernest M. Cortegiano, to Jonathan G. Katz, Secretary, Commission (April 7, 1997) ("Cortegiano Letter"); Isaac

(continued...)

II. Description of the Proposal

The Exchange has stated that the purpose of the proposed rule change is to effect the fair and orderly transfer of the NYSE's options business to CBOE and to secure for traders and brokers who currently make their living on the Exchange's options floor an opportunity to continue their occupations at CBOE.

The Exchange and CBOE executed an agreement ("Transfer Agreement") as of February 5, 1997 setting forth the terms and conditions by which CBOE would acquire the NYSE's options business. The effective date of the acquisition is scheduled for April 28, 1997, subject to fulfillment of conditions specified in the Transfer Agreement and approval of this proposed rule change and the parallel filing by CBOE.[5]

In accordance with the Transfer Agreement, CBOE will create and issue 75 options trading permits ("Permits"), each having a seven-year duration. Subject to limited exceptions, the Permits may not be sold, leased or transferred for a period of one year after the effective date under the Transfer Agreement. The Permits will provide for trading on a new and separate trading floor at CBOE's Chicago facility. Representatives of the Exchange's options community have been provided an opportunity to

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[4](...continued)
M. Ovadiah, to Arthur Levitt, Chairman, Commission (April 14, 1997) ("Ovadiah Letter No. 2"); Michael Schwartz, Chairman, Committee on Options Proposals (April 8, 1997) ("COOP" Letter).

[5] On April 23, 1997, the Commission approved the parallel CBOE filing. See Securities Exchange Act Release No. 38541 (April 23, 1997).

participate in the design of the new trading floor, which will have services and support facilities comparable to those used on CBOE's principal options trading floor. Upon qualification pursuant to CBOE rules, Permit recipients will have (1) the right to act as broker or dealer in transferred options (i.e., options traded on NYSE and not dually listed on CBOE), as well as in options subsequently allocated to the program by CBOE; (2) the right to trade "by order" as principal on CBOE's principal trading facility those options dually listed on NYSE and CBOE; and (3) the right to trade "by order" as principal on CBOE's principal trading facility any other classes of CBOE options up to an aggregate of 20 percent of the holder's quarterly contract volume on CBOE.

In addition, each NYSE options specialist unit Permit holder will be appointed as the CBOE Designated Primary Market-Maker ("DPM") in its transferred specialty options. CBOE will allocate to the new program securities underlying at least 14 new options classes per year for the first seven years after the transfer.

Permit holders will be deemed limited members of the CBOE, subject generally to the same obligations under the CBOE rules as are regular CBOE members, with certain exceptions. One notable exception is that application fees will be waived in certain instances. Also, under certain circumstances, recipients of Permits or their nominees who move their principal residence to Chicago and qualify under CBOE rules may receive up to $10,000 per Permit for customary moving expenses.

Each Exchange non-specialist options firm, including sole proprietors, doing business on the NYSE options floor will be offered the same number of Permits as that firm had in valid NYSE floor badges as of December 5, 1996. However, in order for the firm to actually receive Permits, the firm's individual badge holders on that date must personally qualify and trade on CBOE as individual Permit holders or as "nominees" of the firms owning Permits. Consistent with CBOE rules permitting partnerships and corporations to be members, the firms themselves may own Permits. CBOE may impose limits on transfers of Permits and prohibit substitutions of nominees in a manner designed to assure that Permits are not transferred, and that nominees remain with the firm at CBOE for one year after issuance.

As in the case of non-specialist firms, each Exchange specialist options firm, including joint books, will be offered the same number of Permits as that firm had in valid NYSE floor badges as of December 5, 1996. However in contrast to non-specialist firms, no specified individual will be required to be a specialist firm's nominee or to move to or remain at CBOE as a condition of a Permit's effectiveness. Instead, the specialist firms can select the persons to become nominees and use the Permits. Nominees may be freely substituted, but CBOE may impose limits on transfers of Permits designed to assure that Permits are not transferred for one year after issuance.

CBOE will lease out any of the 75 Permits not issued as specified above, as well as any Permits revoked due to violation

of CBOE restrictions on transfer and substitution of nominees, through an auction or other competitive process. The proceeds from the leases will be distributed pro rata to the approximately 92 persons who, as a result of their options trading rights ("OTR"), were entitled to possible benefits.[6]

The purchase price under the Transfer Agreement is $5,000,000. The Exchange will retain $1.2 million of the purchase price to partially offset Exchange exit costs and as compensation for a ten-year license given to CBOE to list and trade options on the NYSE Composite Index. The Exchange will distribute the remaining $3.8 million of the purchase price, net of an appropriate tax reserve, on a pro rata basis to all of its 1366 members, subject to a determination of whether or not the distribution will be taxed both to the Exchange and to the member recipients. The tax reserve also includes a component designed as a precaution to address the possibility that the lease pool proceeds (discussed herein) may result in imputed income to the Exchange. The Exchange will apply to the Internal Revenue Service for Private Letter Rulings to resolve the two tax

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[6] Because there are as many OTRs as there are Exchange members (a total of 1366), but only 92 OTRs were directly involved in the options business, there was an excess of 1274 OTRs, thus complicating negotiations to obtain cost-free trading permits. Accordingly, by resolution on September 5, 1996, the Exchange's Board limited the universe of OTR holders potentially entitled to direct benefits from the transfer to present and future holders of the 92 "activated" OTRs, that is, to: (1) regular members who already were using or leasing out their OTRs, (2) holders of OTRs separated from equity memberships, and (3) subsequent purchasers from them.

questions. Pending receipt of the rulings, CBOE will pay the $3.8 million into an Escrow Account.

If the Exchange receives an adverse ruling on the lease proceeds, a portion of the escrow account will be released annually as needed to fund tax payments, with any surplus in excess of $1000 in the escrow account after funding of any Exchange tax payments on lease pool proceeds being paid either to the NYSE Foundation[7] or pro rata to the Exchange's 1366 members.[8] If the Exchange receives an adverse ruling on the distribution to the 1366 members, distribution (net of any tax reserve for the lease pool proceeds) of some or all of the escrow account may be made to the NYSE Foundation instead of the 1366 members. Under no circumstances will escrow funds, except for amounts owed to the Exchange and any tax reserves or reserve surplus less than $1000, be distributed other than to the 1366 members or the NYSE Foundation.

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[7] The NYSE Foundation, authorized by the Board of Directors of the Exchange in October 1983 and incorporated as a not-for-profit organization in November 1983, provides funds for educational, civic and charitable purposes. The Foundation's charitable giving focuses on three main areas: education, quality of life, and community. The escrow funds would be available for any such purposes other than those specifically targeted at the securities industry.

[8] See supra note 3. As originally filed, any surplus remaining in escrow after tax payments on the lease pool proceeds would revert to the Exchange's treasury. The amendment states that any surplus, in excess of $1000, of reserve tax funds remaining in the escrow account after tax payments on lease pool proceeds will be paid either to the NYSE Foundation or pro rata to the Exchange's 1366 members.

The Exchange proposes to retain discretion to require payment of outstanding amounts owing to the Exchange by OTR holders through the distribution lease pool proceeds or by conditioning the receipt of Permits upon payment of outstanding debts. (See, e.g., NYSE Constitution, Article II, Section 8; NYSE Rule 795(d)(i); and NYSE Rule 795.10, Supplementary Material.) The Exchange also originally proposed to retain the discretion to require the transfer of separated OTRs to the Exchange. In its letter responding to commenters, however, the Exchange stated its intention not to exercise this discretion.[9]

III. Comments

The Commission received six comment letters in response to the filing, with one commenter submitting two letters.[10] Four commenters opposed the NYSE's transfer of its options business,[11] and one commenter favored the transfer.[12] The Exchange submitted a letter in response to those commenters in opposition to the proposal.[13]

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9 See NYSE Letter.

10 See supra note 4.

11 See Erlich Letter; Rothlein Letter; Ovadiah Letter (April 4, 1997); Cortegiano Letter; Ovadiah Letter No. 2 (April 10, 1997).

12 See COOP Letter.

13 Letter from Richard P. Bernard, Executive Vice President and General Counsel, NYSE, to Michael A. Walinskas, Senior Special Counsel, Division of Market Regulation, Commission (April 21, 1997) ("NYSE Letter").

The four opposing commenters believe the transfer is discriminatory in that it treats differently non-specialist firms that have leased their OTRs versus non-specialist firms that have not.[14] Specifically, these commenters argue that a non-specialist firm leasing out OTRs will not have the right to receive a Permit on the CBOE, while non-specialist firms that have not leased out their OTRs may receive Permits for their individual badge holders. One commenter questioned why the lessees of Permits acquire more privileges than the actual lessors.[15]

Three opposing commenters state their disagreement with the difference in treatment of specialists and non-specialists firms in the transfer.[16] These commenters argue that allowing specialist firms to designate a nominee for trading NYSE Options, while denying that benefit to non-specialist firms, is anti-competitive and unfair. One commenter argues that this will have no constructive purpose and will only serve to drive non-specialist firms out of business.[17]

Two opposing commenters question the actual subject matter of the sale.[18] One commenter questions how one exchange may sell

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[14] See Erlich Letter; Rothlein Letter; Ovadiah Letter (April 4, 1997); Cortegiano Letter.

[15] See Ovadiah Letter (April 4, 1997).

[16] See Erlich Letter; Ovadiah Letter (April 4, 1997); Cortegiano Letter.

[17] See Cortegiano Letter.

[18] See Erlich Letter; Cortegiano Letter.

to another exchange that which it has been granted for free (i.e., the right to trade in certain options).[19] Another commenter essentially believes CBOE is purchasing exclusive listing privileges for the options currently listed on CBOE and NYSE, as well as trading privileges in those options allocated to NYSE.[20]

Two opposing commenters question the validity of the lease pool.[21] They believe there is no assurance that any revenue will be generated from the lease pool.

One commenter was in favor of the proposal.[22] This commenter believes the relative size of the NYSE Options program, coupled with the NYSE's lack of automatic execution capability for options, has led to cost inefficiencies. This commenter believes that the efficiencies available at CBOE will more than off-set any potential reduction in intermarket competition.

In response to commenters, the Exchange states that the proposal is not anticompetitive or discriminatory in its treatment of specialist versus non-specialist firms, but merely reflects the premium placed on specialists as opposed to non-specialists participating in the transfer. The Exchange further states that a badge holder of a non-specialist firm can receive the benefits of a Permit so long as it contributes the attributes

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19 See Erlich Letter.

20 See Cortegiano Letter.

21 See Ovadiah Letter; Cortegiano Letter.

22 See COOP Letter.

that CBOE believes will most enhance success in the transferred market. The Exchange states that the number of Permits negotiated were based on what the market would economically support and the desire to maximize the business opportunities created in the transferred market. The Exchange believes that the resolution is both reasonable and fair.

In response to commenters' assertions of lost or reduced OTR lease revenues as a result of the sale, the Exchange notes that, subject to certain contingencies, OTR owners will receive, for seven years, payments from the CBOE lease pool that are anticipated to substantially exceed typical lease payments now received for OTRs. Moreover, the Exchange states that had it simply ceased operation of its options business without transferring it to CBOE, OTR lessors would thereafter have received no lease payments of any kind.

The Exchange states that the proposal is not monopolistic or an unlawful circumvention of Commission policy on dual listing of options. The Exchange states that it has no agreement with CBOE to restrict dual listings of options or to restrict, monopolize or foreclose any market. Furthermore, the Exchange notes that the agreement with CBOE does not contain a covenant not to compete. The Exchange has agreed to pay $500,000 to CBOE if, within one year of the Effective Date, NYSE determines to re-enter the options business. According to NYSE, this payment acts as a one-time "benefit of the bargain" payment to CBOE.

Finally, the Exchange notes that the value of the transfer of the Exchange's options business was determined by competitive bids in a free and open market setting.

IV. Discussion

The Commission believes NYSE's proposal is consistent with the requirements of Section 6(b)(5) of the Act.[23] Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, perfect the mechanism of a free and open national market system, and, in general, to further investor protection and the public interest.

Early last year, the NYSE conducted a strategic review of the 13-year operation of its options business. In the course of the review, the Exchange considered the potential for overall growth in the options industry, explored the needs of the order-providing firms and the relationships through which the options business is done, assessed the existing capacity and structure in the options industry and the Exchange's existing and potential competitive position, and examined the scale of the effort necessary to make the Exchange's options business line profitable. The Exchange concluded that remaining in the options business, even at the then-current market share, would require significant capital expenditures, and that any effort to significantly improve market share would require an enormous expenditure of capital and human resources. After analyzing its

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[23] 15 U.S.C. § 78f(b)(5).

strategic review, the NYSE determined that it was in the best interest of its members that the options business be transferred elsewhere rather than terminated. The Transfer Agreement between NYSE and the CBOE represents the culmination of NYSE's efforts to transfer the options business.

Based on the representations of the NYSE, and after review of the proposed filing and submitted comment letters, the Commission has determined the Exchange's proposal is consistent with the overall public interest. The Exchange conducted a careful assessments and review of its options business and determined that it no longer wished to continue this business. There is nothing in the Act that compels the NYSE to continue to trade a particular product line. Moreover, the NYSE is permitted to terminate the options business entirely (consistent with an orderly wind-down of existing positions). Rather than simply terminate its options business, the NYSE attempted to package its options business as a whole and attempted to transfer it to another exchange in return for certain privileges accruing to NYSE options members and consideration paid to NYSE members. This not only facilitated the transfer of a talent pool to the CBOE, but also directly benefitted NYSE members.

According to the Exchange, it chose CBOE from among those exchanges showing interest in the transfer because opportunities for traders were best at CBOE. Furthermore, the CBOE bid was selected through an open and competitive process, with NYSE determining that the CBOE bid was superior both from a financial

perspective, and in terms of the opportunity it promised NYSE Options traders and brokers to continue making their living in the options business. The Commission recognizes that the transfer may create hardships for some existing NYSE members. However, the Commission believes that the NYSE has made reasonable efforts to achieve a solution that has maximized the value of the NYSE Options program. Particularly, given the available alternative to the NYSE of terminating the business altogether, the Commission believes the transfer provides additional opportunities for NYSE options traders and brokers that the NYSE was under no obligation to provide under the federal securities laws.

In response to commenters concerns regarding the disparity in the treatment of specialist firms versus non-specialist firms, the Commission believes that such differential treatment is justified given the available alternatives. As noted by the Exchange, the elements of the transfer outlined above represent a series of pragmatic compromises negotiated to reconcile the respective goals of the Exchange and CBOE. NYSE sought to minimize the disruption in the lives of the option badge holders and to maximize the opportunity for its options traders and brokers to continue to make their living in the options business after the transfer.

CBOE sought to maximize the success of the transferred market as a whole by seeking to assure (1) that the NYSE Options specialists participated in the transfer, (2) that NYSE Option

traders and brokers with trading experience moved to Chicago, and (3) that the number of Permits issued optimized the viability of the transferred market as a whole and of the businesses of the Permit holders individually. Thus the Transfer Agreement's "homesteader" element was designed to support CBOE's general goal of attracting experienced traders. However, the omission of a homesteading requirement for specialists reflects the higher priority attached by CBOE to assuring that all of the options specialists participated in the transfer. The terms of the business agreement negotiated and agreed to by the NYSE and CBOE do not appear inconsistent with the federal securities laws.

The Commission believes that the Transfer Agreement's provision for specialists to designate a nominee constitutes a reasonable method to encourage specialist firms to participate in the transfer. The difference in treatment between the specialist and non-specialist firms recognizes their largely disparate backgrounds, rights, duties and functions. The Commission believes it is within the reasonable business judgement of the CBOE to treat the two types of options traders differently. Due to the expertise of the specialist firms in trading NYSE Options, the capital commitment of the specialist firms, and the relationships they have established with order routing firms, it is reasonable for CBOE to grant them more flexible Permits than other NYSE Option members.

The Transfer Agreement also provides for differing treatment among OTR holders. Given the large number of OTR holders, the

Exchange recognized the need to narrow the group eligible for Permits based on activity and expertise in trading of NYSE Options. In this regard, the proposal attempts to create an incentive to those individuals who actively trade NYSE Options (i.e., badge holders) to continue their options business at CBOE. Some commenters opposed this incentive, noting it unjustly benefits lessees of OTRs over non-specialist firm lessors. Given the large number of outstanding OTRs, however, the Commission believes it was reasonable for the Exchange to limit the number of Permits issued in order to achieve an economically beneficial transfer of the NYSE Options business. The Exchange made a determination that the transferred market would economically support only a limited number of Permits. Therefore, the Permits were distributed in a way designed to maximize business opportunities created in the transferred market, based on its determination that non-specialist OTR lessors are less likely to have the knowledge and proficiency of their lessees in trading NYSE Options.

However, the Exchange did not intend to penalize the lessors, and in an effort to compensate these OTR holders, it created the lease pool concept, from which the lessors will receive direct benefits from leasing of excess Permits. As the NYSE noted, it anticipates, given certain contingencies, that payments from the lease pool will exceed lease payments now received for OTRs. Accordingly, the Commission believes that the established limit on Permits, the manner in which they are to be

distributed, and the lease pool program, are all reasonable provisions contained in the Transfer Agreement. By limiting Permits to experienced NYSE Option traders, the Commission believes the Exchange's goal of transferring a pool of trained experts in NYSE Options is more likely to be met.

Some commenters questioned the validity of the transfer and believe it is nothing more than the purchase of trading rights in NYSE-listed options. The Commission would regard any anticompetitive arrangements in the trading of options to be of very serious concern, but after reviewing the proposed transfer closely, the Commission disagrees with these assertions. As the Exchange noted in its letter responding to commenters,[24] there is no agreement between NYSE or CBOE to restrict dual listings of options or to restrict, monopolize or foreclose any market. The Commission believes that the proposal provides an appropriate vehicle for the CBOE to purchase, through an organized transaction, a trained pool of talent with experience in the trading characteristics of NYSE Options.[25] The Commission notes that any other options exchange may, at any time, trade all or some NYSE Options. Furthermore, the Commission believes that the transfer provides a viable choice for those NYSE Options traders who desire to continue conducting an options business. Given NYSE's expressed intention to terminate options trading on its

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[24] See NYSE Letter.

[25] The fee paid by the CBOE also reflects, in part, the ten-year license granted to CBOE to enable it to trade NYA Options.

Exchange, the Commission believes that the transfer of the options business to CBOE will provide NYSE Options firms with benefits otherwise potentially unavailable if the NYSE firms were to negotiate individually with the CBOE.[26]

Should the NYSE decide to re-enter the options business within a year of the Effective Date, it has agreed to pay CBOE $500,000. The Commission believes this agreement is reasonable and does not constitute a "noncompetition" agreement between CBOE and NYSE, but instead serves to compensate CBOE for a portion of the costs associated with acquiring the NYSE's Options business and essentially refund the fee earned by the NYSE for brokering the transfer of its options business to the CBOE. Moreover, the payment amount is so small that it would not effectively serve as any deterrent to the NYSE's re-entry into trading NYSE Options.

Commenters questioned whether any revenue would be generated from the lease pool. The Commission believes, based on the representations of the Exchange, that the proceeds from the lease pool may substantially exceed typical lease payments now received for OTRs. The Commission notes that if the Exchange had determined to cease operation of its options business, OTR lessors would have received no lease payment of any kind. In this regard, the Commission believes the creation of a lease pool for distribution of lease proceeds is equitable.

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[26] The Commission also notes that any NYSE Options firm always had the ability to become a member of any other options exchange and conduct an options business on that exchange.

The Exchange, pursuant to its Constitution and rules, retains the discretion to require payment of outstanding amounts owing to the Exchange by conditioning the receipt of Permits thereon, or through the distribution of lease pool proceeds.[27] The Commission believes such discretion is reasonable as it will assure the Exchange that upon the transfer of OTRs, outstanding debts to the Exchange will be settled. The Commission believes this is reasonable and will not affect the substantive rights of OTR holders as the provision is currently applied for the transfer of OTRs.

The Commission finds good cause to approve Amendment No. 1 to the filing prior to the 30th day after the date of publication of the notice of filing because the Amendment does not affect the substantive rights of the members and accelerated approval will facilitate the uninterrupted transfer of the NYSE Options business to CBOE as scheduled.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all

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[27] NYSE Constitution, Article II, Section 8; NYSE Rule 795(d)(i); and NYSE Rule 795.10, Supplementary Material.

written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 5th Street, N.W., Washington, D.C. 20549. Copies of such filings will also be available at the principal office of the Exchange. All submissions should refer to File No. SR-NYSE-97-05 and should be submitted by [insert date 21 days from the date of publication] in the Federal Register.

VI. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change and Amendment No. 1 are consistent with the Act and the rules and regulations thereunder applicable to the NYSE, and in particular Section 6(b)(5).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[28] that the proposed rule change (File No. SR-NYSE-97-05) be and hereby is approved, and that Amendment No. 1 filed thereto be and hereby is approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[29]

Jonathan G. Katz
Secretary

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[28] 15 U.S.C. 78s(b)(2).

[29] 17 CFR 200.30-3(a)(12).

Public Statements

October 18, 2005: Paul Bennett, NYSE Chief Economist, Testimony before the U.S. Senate Banking Committee, Subcommittee on International Trade and Finance, Hearing on "Growth and Development of the Derivatives Market"

Comments on the Development and Regulation of U.S. Equities and Derivatives Markets

Mr. Chairman, Ranking Member Bayh, and members of the committee, I am Paul Bennett, Senior Vice President and Chief Economist at the New York Stock Exchange (NYSE or Exchange). On behalf of the New York Stock Exchange and our Chief Executive Office John Thain, thank you for inviting me to testify today before the Subcommittee. The NYSE greatly appreciates your leadership in overseeing the international aspects of our nation's evolving financial markets. We find ourselves at a critical point in that evolution, and your attention to these issues could not be more timely as we seek to maintain the competitive leadership of U.S. financial markets in the world and to protect the interests of investors, both individual and institutional.

I. Evolution of today's financial markets

The New York Stock Exchange is the world's largest cash equities market. We serve 90 million investors, the institutional community and over 2,700 of the world's leading corporations. The companies listed on the NYSE have a total global market capitalization of $21 trillion. During the first nine months of 2005, our average daily trading volume was 1.61 billion shares, worth over $55 billion a day. We are an important cog in the capital formation engine, helping to provide companies and investors with opportunities that translate into job creation and economic growth.

You have asked us to speak about the growth of the derivatives market and its role in the U.S. economy. While the NYSE does not run a derivatives market today, the importance and growth of that market have had a significant impact on the NYSE, and have helped shape our strategy for the future.

Equity Market

The U.S. equity market has grown steadily in the past decade. The consolidated daily volume in the US equity market, including both the listed market and OTC market, has reached about 4 to 5 billion shares a day representing $80 to $100 billion traded daily.

Decimalization and technological innovation have continuously decreased costs for investors on the US equity market. According to the GAO's 2005 study on the Securities Market, costs for institutional investors have decreased by 30% to 53% overall, and by 90% for individual investors.

Today there are more buyers and sellers than ever before. Forty-two percent of adults in the U.S. today own shares; moreover, since 1990, the portion of U.S. households' assets in equities and mutual funds has nearly doubled, from 9.6% to 16.8% at the end of the second quarter in

2005.

The NYSE is committed to providing those investors the highest value proposition. And to do so, we must recognize the new realities of financial services. Today's market differs greatly from that of a generation ago. The diversified products, the rise in electronic trading, and the globalization of our capital markets have utterly transformed the way our markets work.

Derivatives Markets

The biggest financial story of this era may be the bold and imaginative new ways we are creating to manage risk, reduce the costs of hedging, and make markets more efficient. For investors, the result is an explosion of new opportunities to invest in new products on new platforms.

A derivatives market that started with futures contracts on agricultural commodities, like butter, milk and live cattle, in the 19th century, has turned into the principal means for investors to manage their risk no matter what the investment. Today, options, futures, swaps and other innovations have become widely used and even required risk management tools for sophisticated investors and financial intermediaries. While the $100 billion daily trading is an impressive figure in the equities market, it has not escaped our attention that the value of contracts traded on the Chicago Mercantile Exchange (CME) averaged over $2 trillion a day for the first 6 months of 2004.

And while volume on the NYSE remained relatively flat in 2004, total volume in equity options, both in the U.S. and abroad, soared by nearly 30%. From 1995 to 2004, options volume has increased by 400%. Over that same period, the total number of options contracts traded in the U.S. has risen from 288 million to 1.2 billion.

For futures, the CME's 2004 annual volume was more than 787 million contracts, representing double-digit volume gains for the fifth consecutive year. The Chicago Board of Trade's (CBOT) 2004 annual volume reached nearly 600 million contracts, a record high for the CBOT and the third consecutive record-breaking year for the CBOT.

Competitive Landscape

In addition to the growth in new products and platforms, today's financial markets are facing a new global challenge to the traditional leadership of U.S. capital markets.

There is now greater mobility of capital, greater international participation in local markets, and greater competition among markets in different geographical areas. Financial institutions, investment firms, and other financial intermediaries have increased their trading across national boundaries, in numerous different markets, outside traditional exchanges and even directly among themselves.

Today, traditional rivals like the Deutsche Börse are becoming better capitalized, and better competitors. While this is true for the equities market, it is especially true in the derivatives market. Eurex, which is jointly owned by Deutsche Börse and SWX Swiss Exchange, is the

world's largest future and options market for euro denominated derivative instruments. In addition, according to Eurex's monthly statistics from third quarter 2005, it has the largest market share in terms of contract turnover for the entire international options and futures markets—12.84%. The next four biggest players are CME (11.28%), CBOT (7.69%), Chicago Board of Options Exchange (CBOE) (5.44%), and the International Securities Exchange (ISE) (4.88%).

And investors are responding to these opportunities. An increasing portion of U.S. portfolios is going overseas into non-U.S. investments. Since 1990, in U.S. investors' portfolios, the equity portion alone of non-U.S. stocks has nearly tripled, from 6.0% to 16.8%.

In addition, the NYSE's competitors have become stronger through demutualization and consolidation. In response to growing competition, many marketplaces in both Europe and the U.S., such as the London Stock Exchange plc and Nasdaq, have demutualized to free themselves from the constraints of their membership structures and to provide greater flexibility for future growth. In recent years, the number of new market entrants, the need to respond to the globalization of capital markets, and the desire to provide global, cross-border services to clients has also led to a wave of consolidation, both in the U.S. and abroad.

In order to compete effectively in this global climate, and in order to provide investors and issuers with the best possible marketplace, we must become a multi-product, global competitor.

We are looking at the possibility of expanding or adding new platforms in areas that can benefit from increased transparency. We are currently seeking an SEC exemption to expand our investor friendly corporate bond platform to trading unregistered bonds of our listed companies.

We are also making great progress in one fast-growing asset class, U.S. Exchange Traded Funds (ETFs), whose total funds have soared over 50% last year to $227 billion. ETFs provide investors an excellent way to manage risk and diversify by trading a portfolio of stocks in a designated area such as gold, natural resources, the S&P, or Chinese-based equities.

But ETFs represent only a single star within the giant constellation of financial markets. We need to expand our universe much more broadly in order to compete successfully.

NYSE is becoming a public, for-profit company to give us improved access to capital, and the ability to use stock as acquisition currency. We are merging with Archipelago, an outstanding, entrepreneurial company that is pioneering leading-edge trading platforms and customer focus.

That is also why we are building the Hybrid Market; we are responding to the demand of many of our customers for greater ability to trade electronically. The Hybrid Market will give customers the choice of two investor-friendly paths: either the sub-second speed of automatic execution, or the price improvement and best value that distinguish the auction market.

Ten years ago, these changes at the NYSE would have been

unthinkable. But today, moving forward without these changes is what would be unthinkable. We must respond to investors' needs and thereby preserve the position of the U.S. as the leader in our global financial marketplace.

II. Regulatory developments

As you can imagine, there are also regulatory considerations that affect not only the competitive landscape but also dictate where and how individuals and their representatives invest their money. Two such examples are capital requirements for broker-dealers and margin rules for brokerage accounts.

Capital Requirements

For years, U.S. broker-dealers have moved much of their derivatives business overseas because of stringent capital requirements that make conducting such business in the U.S. less attractive.

In August of 2004, the SEC adopted rule amendments that established a voluntary, alternative method for broker-dealers to compute net capital. This rule allows them to use internal models to calculate net capital requirements for market and derivatives related credit risk. One condition to using this alternative method is that the broker-dealer's ultimate holding company and affiliates become consolidated supervised entities and consent to group wide oversight (consolidated supervision) from the SEC. Another condition is that the broker-dealer must maintain $5 billion of tentative net capital in order to participate, which limits the number of broker-dealers who are able to take advantage of this rule.

The Exchange currently has rule proposals before the SEC to modify its capital rules to reflect a different level of capital and to change its margin rules to accommodate derivatives business that may come back into the U.S. To date, five internationally active firms, including Goldman Sachs, Merrill Lynch, Bear Stearns, Lehman Brothers and Morgan Stanley, have either applied or been approved for CSE (consolidated supervised entity) status.

Relaxation of the capital rules by allowing firms to use internal models to compute charges has encouraged the firms using this alternative method to study whether to bring their OTC derivative dealers back into the U.S. broker-dealer. There is significant benefit to the firms from a legal netting standpoint to have all transactions with a single counterparty in one legal entity. They are studying the technology issues as well as other regulations that might be applicable before reaching a final decision.

Portfolio Margining

Another regulatory development that affects derivatives concerns potential changes to portfolio margining.

The evolution of the equities and derivatives markets puts into focus the need to ensure a sensible regulatory approach that will foster competition among markets and strengthen the U.S. position in the global marketplace.

As the Banking Committee's hearing last month on Commodity Futures Trading Commission (CFTC) reauthorization highlighted, it is essential that regulation of the security futures and equities markets maintain the competitive balance that was established by Congress in 2000 in the Commodity Futures Modernization Act ("CFMA").

One aspect of that regulation that has been under scrutiny is the margin rules that apply to different products. We strongly agree with the many participants in the financial markets, several of whom testified before the Committee, that portfolio margin rules should be developed not just for select sectors of the marketplace, but for all equity products. Currently, margins for security futures customers are calculated using a strategy-based approach, which computes margin requirements for each individual position or strategy in a portfolio. Portfolio margining, used for all futures contracts and for security options at the clearing level, is risk-based, and more accurately reflects economic exposure to the marketplace.

The NYSE is working with the NASD, CBOE, CFTC, and other commodities exchanges and market participants to develop a portfolio margin rule that would apply to all equities. We consider this initiative a top priority and will be working with our fellow regulators to produce a rule for SEC consideration by year-end.

III. Conclusion

Today's financial markets have evolved significantly over a relatively short period of time. Technological changes have increased the speed of transactions and reduced the costs of those transactions. The equity market has grown steadily, while the derivatives market has grown exponentially with the introduction of new products. The international competitive landscape has forced U.S. markets and market participants to think globally.

While some may see this change as a threat, the NYSE sees opportunity. Investors will increasingly need platforms that can meet all of their investment needs, including equities, futures, options or swaps. As the NYSE proceeds with its plans to become a publicly traded company and merge with Archipelago, thereby increasing our capitalization and diversifying our product offering, we are looking to take advantage of the opportunities that this new competitive landscape will present.

Mr. Chairman, and Ranking Member Bayh, and members of the committee, thank you for the opportunity to present this testimony. I look forward to answering your questions.

Amy Butte's (the NYSE's chief financial officer) good faith or diligence in creating or agreeing to the projections. Schweihs Tr. 159, 207-8. Citigroup's opinion letter is entirely appropriate in this respect, as a study by a financial expert retained by defendant NYSE, Professor Burton Malkiel of Princeton University, demonstrates, Malkiel Tr. 113:7-11, and indeed as opinion letters that Willamette and/or Mr. Schweihs themselves have signed demonstrate.

- In particular, while Mr. Schweihs criticizes the NYSE standalone projections for not containing new areas of business, he admitted in his deposition that he did not study whether the NYSE had a successful track record of entering new businesses on its own. Schweihs Tr. 93. He simply "assumed" that if the NYSE pursued new areas of business, it would be profitable. Schweihs Tr. 91-92. Cf. Butte Tr. 187-191. The recent NYSE announcement cited by Mr. Schweihs was explicitly a vote of confidence on the combination and the ability of NYSE Group to offer new products after the merger.

- Mr. Schweihs criticizes the Citigroup report for not addressing the absence of a collar. As the settlement agreement expressly provides, the Citigroup report addresses the transaction on the terms approved by the NYSE Board of Directors — not an alternative transaction with a collar (but without any other terms changing). See Hearing Tr. 303-05 (Allison testimony).

- Mr. Schweihs does not dispute the strategic importance of this deal to the NYSE. Schweihs Tr. 223-225. He simply omits such strategic benefits from his own fairness analysis.

- Mr. Schweihs criticizes the Citigroup report because "there is no effort to quantify or analyze the impact" of the lock-up restrictions. The Citigroup opinion expressly states: "We have taken into consideration the liquidity of the NYSE Membership Interests; NYSE's statement contained in the proxy statement/prospectus, dated November 3, 2005, that the NYSE Group board of directors intends, as market conditions permit, to provide former NYSE members with opportunities, from time to time, to sell their NYSE Group Shares pursuant to a registered secondary offering and to remove the transfer restrictions on the shares sold; transfer restrictions imposed or proposed to be imposed on other exchange demutualization transactions; and other factors relevant to our liquidity analysis." As Mr. Allison testified at the hearing, he (and other NYSE Board members) viewed the share restrictions as a net positive because, without a share restriction, all the shares could be sold at once, damaging the market for the

[redacted]

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Archipelago Dropped Inet Accord for NYSE Offer, Documents Show

Nov. 14 (Bloomberg) -- Archipelago Holdings Inc. walked away from an agreement to buy Instinet Group Inc.'s Inet stock-trading unit in accepting a takeover bid from the New York Stock Exchange, court documents show.

The ``final'' accord with Inet was dated March 16, five days before the chief executive officers of Archipelago and the NYSE agreed on preliminary terms, according to transcripts of depositions from a lawsuit against the Big Board's offer. The Inet talks were code-named ``Iguana'' by Goldman Sachs Group Inc. bankers advising Archipelago.

The documents, released by the NYSE to head off criticism of the purchase, also show that the Big Board last year sought to buy the International Securities Exchange, a stock-options market that went public in March.

``These markets have been talking to each other about partnerships and links since day one,'' said Jim Angel, a finance professor at Georgetown University in Washington. ``As the technology has changed and regulation has evolved, it seems like an end-game in the consolidation drive.''

A hearing will begin today in New York on a motion to delay voting by NYSE members, set for Dec. 6, on the Archipelago deal. The purchase, announced in April, would transform the 213-year- old institution into a for-profit, publicly traded company valued at about $7.8 billion.

Members will own a 70 percent stake in the combined company, and each will also get $300,000 in cash. The remaining 30 percent will go to shareholders of Archipelago, the second-largest U.S. electronic market.

6,000 Pages

The documents illustrate that the NYSE didn't want to be left behind as competitors merged or became for-profit public companies. Nasdaq Stock Market Inc. agreed to buy Instinet, the No. 3 electronic stock market, for $1.88 billion in April. ISE, the biggest U.S. market for stock options, raised $180 million in its initial share sale.

Ten NYSE members, led by William Higgins, are plaintiffs in the suit. They claim the Archipelago transaction shortchanges members, the NYSE didn't fully explore alternatives, and the takeover was negotiated with conflicted advice from Goldman, which represented both markets.

More than 6,000 pages of depositions taken between Oct. 11 and Nov. 2, along with exhibits, were posted on the Big Board's web site at the end of last week.

Any delay in the members' vote may embolden rivals as they seek to capitalize on the Securities and Exchange Commission's Regulation NMS. The rules go into effect next year and require orders to be done at the best price available electronically.

Army, Navy, Iguana

Nasdaq expects to complete its purchase of Instinet, 62 percent owned by Reuters Group Plc, before year end. Terms call for Nasdaq to sell Instinet's institutional brokerage and Lynch, Jones & Ryan units and keep Inet, an electronic market.

``It's unfair for seatholders to take the risk of not voting on this while the rest of the market is moving,'' said Christopher Mason, an attorney at New York-based Nixon Peabody LLP that filed a brief with the court on behalf of 400 members.

Archipelago had a ``final purchase agreement'' for Inet on March 16, according to documents discussed in an Oct. 21 deposition of Herbert Allison, then an NYSE director. The company, based in Chicago, would have paid an undisclosed price and received a loan from Goldman.

Allison was presented with two e-mails between Goldman bankers and Archipelago executives about negotiations for Inet, called Iguana as a precaution against divulging the name of the company, according to the transcript. The NYSE was nicknamed Navy, while Archipelago was Army.

`Shook Hands'

John Thain, the NYSE's chief executive, and Archipelago CEO Gerald Putnam reached a preliminary accord on the financial terms of their merger on March 21.

``We shook hands on a 30/70 deal,'' Putnam wrote in an e- mail to William Ford, managing director of Archipelago's largest shareholder, Greenwich, Connecticut-based General Atlantic LLC. ``He said it was the best he could get past the shareholders,'' wrote Putnam, referring to Thain.

``I don't recall using those words or words like that,'' Thain said during his six-hour deposition. The CEO said he was merely discussing what would be acceptable to NYSE members and the board and Putnam wanted a two-thirds, one-third split.

Allison, CEO of the New York-based pension fund TIAA-CREF, said in the deposition that he was unaware of the role played by Goldman in Archipelago's offer of Inet. Another former director, Dennis Weatherstone, also said he wasn't informed.

ISE Favored

``I would liked to have known,'' Weatherstone, a former CEO of J.P. Morgan & Co., said during an Oct. 12 deposition. ``I would have thought that it might put Goldman in conflict problems.'' He and Allison both left the board in August.

Lucas van Praag, a Goldman spokesman, declined to comment. Allison ``doesn't make comments related to the boards he serves or has served on,'' said Stephanie Cohen Glass, a spokeswoman for TIAA-CREF in New York. Weatherstone didn't return a message left at his New York office for comment.

The NYSE had been interested in buying Archipelago since at least October 2004, Edgar S. Woolard Jr., a NYSE director since August 2004 and retired chairman of DuPont Co., said during his deposition. The Big Board's first pick was the ISE, he said.

``The focus was on ISE, with some interest in Archipelago,'' Woolard said. The board learned in December, after meetings between executives of the NYSE and the ISE, that the New York- based options market was ``not interested'' in being acquired, he said.

`Other Things'

Bruce D. Goldberg, an ISE spokesman, didn't return a telephone message left at his New York office or an e-mail. Richard Adamonis, a spokesman for the exchange, declined to comment about whether the NYSE is still interested in a deal.

The Big Board wants to lead the consolidation among U.S. securities exchanges, Thain said on Nov. 10.

``The most important thing right now is to get the acquisition we have in the works now closed,'' he said at a briefing with reporters at the Securities Industry Association's annual meeting in Boca Raton, Florida. ``Then we will look at other things down the road.''

To contact the reporter on this story:
Edgar Ortega in New York at ebarrales@bloomberg.net.

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